

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Oakwood Homes Corporation, et al.,

Debtors.

Chapter 11

Case No. 02-13396 (PJW)

OHC Liquidation Trust,

Plaintiff,

v.

Adv. Proc. No. 04-57060 (PJW)

Civil Action No. 07-799 (JJF)

Credit Suisse (f/k/a Credit Suisse First Boston, a Swiss banking corporation), Credit Suisse Securities (USA), LLC (f/k/a Credit Suisse First Boston LLC), Credit Suisse Holdings (USA), Inc. (f/k/a Credit Suisse First Boston, Inc.), and Credit Suisse (USA), Inc. (f/k/a Credit Suisse First Boston (U.S.A.), Inc.), the subsidiaries and affiliates of each, and Does 1 through 100,

Defendants.

**DECLARATION OF J. JUSTIN WILLIAMSON
IN SUPPORT OF DEFENDANTS' MOTION TO EXCLUDE THE EXPERT
TESTIMONY OF MICHAEL TENNENBAUM**

I, J. Justin Williamson, declare as follows:

1. I am an attorney associated with the law firm of Linklaters LLP, counsel to Defendants in this action. I submit this Declaration in connection with Defendants' Motion to Exclude the Expert Testimony of Michael Tennenbaum Pursuant to Fed. R. Evid. 702.

2. Attached hereto as Exhibit A is a true and correct copy of Plaintiff's Supplement to Its Rule 26(a)(1) Initial Disclosures, dated May 1, 2006.

3. Attached hereto as Exhibit B is a true and correct copy of Plaintiff's Motion for Determination of Plaintiff's Rights to a Jury Trial, dated October 5, 2007.

4. Attached hereto as Exhibit C is a true and correct copy of Plaintiff's Reply Brief in Support of the Motion for Determination of Plaintiff's Rights to a Jury Trial, dated October 17, 2007.

5. Attached hereto as Exhibit D is a true and correct copy of the Report of Michael Tennenbaum, served April 27, 2007.

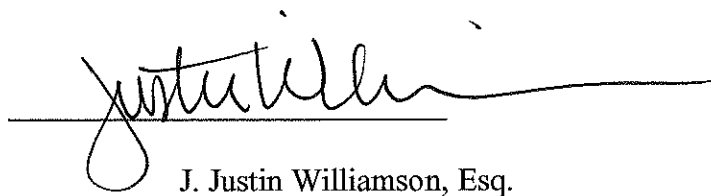
6. Attached hereto as Exhibit E is a true and correct copy of the Deposition of Michael Tennenbaum, dated October 22, 2007.

7. Attached hereto as Exhibit F is a true and correct copy of the Expert Rebuttal Report of Allen M. Pfeiffer, dated February 29, 2008.

8. Attached hereto as Exhibit G is a true and correct copy of the Deposition of Allen M. Pfeiffer, dated March 27, 2008.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 14, 2008
New York, New York



J. Justin Williamson, Esq.

Exhibit A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
Oakwood Homes Corporation, et	)	Case No. 02-13396 (PJW)
al.,)	
	)	Jointly Administered
Debtors.)	
)	
<hr/> OHC Liquidation Trust,)	
)	
Plaintiff,)	
	)	Adversary Proceeding No. 04-
v.	)	57060 (PJW)
)	
Credit Suisse (f/k/a Credit)	
Suisse First Boston, a Swiss)	
banking corporation), Credit)	
Suisse Securities (USA), LLC)	
(f/k/a Credit Suisse First)	
Boston LLC), Credit Suisse)	
Holdings (USA), Inc. (f/k/a)	
Credit Suisse First Boston,)	
Inc.), and Credit Suisse (USA),)	
Inc. (f/k/a Credit Suisse First)	
Boston (USA), Inc.), the)	
subsidiaries and affiliates of)	
each, and Does 1 through 100,)	
)	
Defendants.)	
<hr/>)	

**PLAINTIFF OHC LIQUIDATION TRUST'S SUPPLEMENT TO
ITS RULE 26(a)(1) INITIAL DISCLOSURES**

Plaintiff OHC Liquidation Trust ("Trust" or "Plaintiff"), by and through its duly appointed trustee, Alvarez & Marsal, LLC, hereby submits the following supplement to its Rule 26(a)(1) initial disclosures to Defendants Credit Suisse (f/k/a Credit Suisse First Boston, a Swiss banking corporation), Credit Suisse Securities (USA), LLC (f/k/a Credit Suisse First Boston, LLC), Credit Suisse Holdings (USA), Inc. (f/k/a Credit Suisse First Boston, Inc.), and Credit Suisse (USA), Inc. (f/k/a Credit Suisse First Boston (USA), Inc.) (collectively, "CSFB" or "Defendants") as follows:

I. INTRODUCTION

The Court, in its Memorandum Opinion entered on March 31, 2006, ordered the Trust to provide additional information regarding its preliminary damage calculations pursuant to Federal Rule of Civil Procedure 26(a)(1)(C), made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7026. For convenience, the Trust has created the following categories for its computation of damages: (a) Preferential and Fraudulent Transfers (the Fifth, Sixth, Seventh, and Eighth Counterclaims); (b) Breach of Fiduciary Duty and Negligence (the First and Second Counterclaims); (c) Unjust Enrichment (the Third Counterclaim); (d) Breach of Implied and Express Contract (the Ninth Counterclaim); (e) Deepening Insolvency (the Tenth Counterclaim); and (f) Objection to CSFB's Claim and Equitable Subordination (the Fourth Counterclaim). Calculations of damages set forth herein are initial estimates based upon the best information currently available to the Trust

and are subject to modification. Fact discovery is still ongoing in this adversary proceeding, and no depositions have taken place. Expert discovery will follow the completion of fact discovery. The Trust, therefore, reserves the right to amend, supplement, or modify its initial estimated damage calculations from time to time as additional information becomes available and additional analyses are performed.

The Trust either has already produced or will produce all documents in its possession, which are not privileged or protected from disclosure, on which its computation of damages is based, including material bearing on the nature and extent of damages suffered. The Trust, however, will reproduce certain principal documents bearing on its damage calculations shortly after service of this supplement.¹

II. CALCULATION OF DAMAGES

CATEGORY	COUNTERCLAIM	DAMAGES SOUGHT AND GENERAL ANALYSIS
I. Preferential and Fraudulent Transfers		
	Fifth Counterclaim (90 Day Transfers)	Subject to any valid defenses, the Trust seeks to recover all transfers made to CSFB on or within 90 days of the petition date (the "90 Day Transfers") as preferential transfers pursuant to section 547(b) of Title 11 of the United States Code (the

¹ There are other documents that may bear on the Trust's damage calculations. The Trust is merely grouping together and reproducing certain material documents as a courtesy to CSFB.

CATEGORY	COUNTERCLAIM	DAMAGES SOUGHT AND GENERAL ANALYSIS
		"Bankruptcy Code"), plus interest. The 90 Day Transfers, the sum of which is approximately \$166,811,129.54, are described in paragraph 41 of the Trust's objection to claim and counterclaims (the "Objection/Counterclaims").
	Sixth Counterclaim (One Year Transfers)	The Trust asserts that CSFB was an insider of the Debtors. Accordingly, subject to any valid defenses, the Trust seeks to recover all transfers made to CSFB on or within one year of the petition date (the "One Year Transfers") as preferential transfers pursuant to Bankruptcy Code section 547(b), plus interest. The One Year Transfers, the sum of which is approximately \$595,845,154.45, are described in paragraph 42 of the Objection/Counterclaims. ²
	Seventh Counterclaim (Fraudulent Transfers under Bankruptcy Code section 548)	Subject to any valid defenses, the Trust seeks to recover the One Year Transfers from CSFB as fraudulent transfers under Bankruptcy Code section 548(a)(1)(B), plus interest.
	Eighth Counterclaim (Bankruptcy Code section 544(b) and Applicable State Law)	Subject to any valid defenses, the Trust seeks to recover the One Year Transfers from CSFB under applicable state fraudulent transfer and/or conveyance laws, plus interest. The Trust may also be entitled to recover transfers made to CSFB more than one year prior to the petition date

² In paragraph 42 of the Objection/Counterclaims, the Trust listed \$595,845,398.42 in transfers, which contains a minor mathematical error. The proper sum of the One Year Transfers is \$595,845,154.45.

CATEGORY	COUNTERCLAIM	DAMAGES SOUGHT AND GENERAL ANALYSIS
		pursuant to applicable state laws.
II. Breach of Fiduciary Duty and Negligence		
	First Counterclaim (Breach of Fiduciary Duty)	<p>The Trust asserts that as a result of the multi-layered and multi-faceted relationship with the Debtors (as the lender, underwriter, powerful warrant holder, and financial/restructuring advisor), CSFB was an insider and owed the Debtors fiduciary duties. Moreover, because the Debtors were insolvent or within the zone or vicinity of insolvency up to two or more years prior to bankruptcy, CSFB owed the Debtors' creditors fiduciary duties. CSFB had access to and knowledge of confidential and inside information.</p> <p>Despite its knowledge of the Debtors' failing financial health, the Trust asserts that CSFB continued to underwrite asset-backed securitization offerings and facilitated those offerings through extensions of credit under the warehouse facility. In addition, CSFB encouraged the Debtors' use of the Loan Assumption Program ("LAP"). CSFB acted for its own benefit, and at the detriment of the Debtors. As a result of these and other breaches of fiduciary duties, CSFB unjustly enriched itself, and so the Trust is entitled to recover from CSFB all fees and other remuneration paid to CSFB and to recover consequential and actual damages,</p>

CATEGORY	COUNTERCLAIM	DAMAGES SOUGHT AND GENERAL ANALYSIS
		<p>including, but not limited to:</p> <ol style="list-style-type: none"> 1. Fees, costs, and expenses incurred by the Debtors for the LAP. The Trust estimates that the LAP cost the Debtors approximately \$56.5 million. 2. In order to fund the LAP, the Debtors were forced to borrow more under their credit facilities. <ol style="list-style-type: none"> a. CSFB Warehouse Facility <ol style="list-style-type: none"> i. Fees for establishing the warehouse facility with CSFB - approximately \$2.5 million. ii. Approximately twenty-one payments of \$416,666.67 in monthly maintenance fees to CSFB for the warehouse facility, for a total of approximately \$8,750,000. iii. Interest payments for the warehouse facility for the period from February 2001 to the petition date - approximately \$3,464,767.90. iv. Other professional fees and costs incurred in connection with this facility. b. Servicer Advance Facility: costs of approximately \$2.4 million. 3. Fees and Costs of Securitizations <ol style="list-style-type: none"> a. Underwriting fees paid to CSFB (for the 1999-E; 2000- A, B, C, & D; 2001- B, C, D, & E; LOTUS II, III, & IV; and 2002- A, B, & C series of securitizations): approximately \$11.93 million. b. Fees and costs paid to various

CATEGORY	COUNTERCLAIM	DAMAGES SOUGHT AND GENERAL ANALYSIS
		<p>professionals related to securitizations and credit facilities, including, but not limited to, fees and costs paid to Hunton & Williams; Loeb & Loeb; Rayburn Cooper & Durham; Richards Layton & Finger; Simpson Thacher & Bartlett; Sullivan & Worcester; and Wachtell, Lipton, Rosen & Katz.</p> <p>c. Fees paid to Chase Manhattan Bank (later JP Morgan Chase) as indenture trustee for REMICs: to be determined.</p> <p>d. Cost of running the Loan Origination Department for the LAP: approximately \$44.2 million.</p> <p>4. The Debtors' obligations, including guarantee payments made, on account of defaults on REMICs: to be determined.</p> <p>5. Prejudgment interest.</p>
	Second Counterclaim (Negligence)	Damages for this Counterclaim are substantially similar to the damages sought for breach of fiduciary duty, which are discussed above. The same facts that support the breach of fiduciary Counterclaim may support this Counterclaim. Nevertheless, this Counterclaim is a separate Cause of Action on which the Trust may recover damages.
III. Unjust Enrichment		
	Third Counterclaim (Unjust Enrichment)	For this Counterclaim, the Trust seeks restitution and disgorgement of profits from CSFB. With respect to the restitution component, the damages sought are substantially similar to

CATEGORY	COUNTERCLAIM	DAMAGES SOUGHT AND GENERAL ANALYSIS
		<p>the damages sought for the breach of fiduciary duty and negligence Counterclaims, which are discussed above. With respect to the second component, the Trust seeks the disgorgement of profits CSFB earned by using the funds that it illicitly received from the Debtors. As a result of CSFB's refusal to respond to interrogatories or produce documents related to its profits (including collateral profits, or so-called "profits on profits"), the Trust is unable to calculate this component of damages. If the Trust prevails on its unjust enrichment claim, it may request that the Court order CSFB to disgorge its profits calculated based on the annual rate of return to CSFB's equity on a global/consolidated basis as reported in CSFB's SEC and other additional filings, compounded annually.</p>
<p>IV.</p> <p>Breach of Implied and Express Contract</p>		
	<p>Ninth Counterclaim (Breach of Implied and Express Contract)</p>	<p>The Trust asserts that CSFB breached both its implied and express contract with the Debtors to act as their restructuring and financial advisors. The Trust alleges that CSFB breached its contractual obligations to the Debtors by, among other things, improperly prolonging the prepetition operations of the Debtors, failing to find a suitable debtor-in-possession financing and/or warehouse line prior to the petition date, failing to adequately prepare the Debtors for the bankruptcy filing, and failing to</p>

CATEGORY	COUNTERCLAIM	DAMAGES SOUGHT AND GENERAL ANALYSIS
		<p>adequately advise the Debtors that CSFB could not act as a restructuring and financial advisor to the Debtors once in bankruptcy as a result of CSFB's role as underwriters for the Debtors. The Trust seeks to recover the following damages, plus interest, from CSFB:</p> <ol style="list-style-type: none"> 1. Express Contracts - approximately \$1,811,129.54 paid by the Debtors to CSFB under the Financial Advisory Agreement. 2. Excess cost of the debtor-in-possession financing ("DIP Financing"): approximately \$7.8 million. 3. Amounts paid to FTI Consulting to arrange the DIP Financing as a result of CSFB's failure: at least \$323,290 pursuant to FTI Consulting's fee application. The Debtors and/or bankruptcy estates also incurred additional fees and costs to Rayburn Cooper & Durham; Morris Nichols; Deloitte & Touche; Hunton & Williams; and Akin Gump. 4. All other expenses of reorganization: to be determined. 5. Postpetition Warehouse Facility. It cost the Debtors approximately \$2 million in fees to restart the warehouse facility post-petition. 6. Implied contract damages. The Trust asserts that well before the date of its written contract, CSFB acted as the financial advisor to the Debtors. The damages for breaching this implied contract include consequential damages suffered by the Debtors as a result of CSFB's failure

CATEGORY	COUNTERCLAIM	DAMAGES SOUGHT AND GENERAL ANALYSIS
		to advise the Debtors to stop the asset-backed securitizations, which did not benefit the Debtors but only deepened their insolvency. The amount sought for CSFB's breach of the implied contract is substantially similar to the damage calculation for the Tenth Counterclaim (i.e., Deepening Insolvency), which is discussed below.
V. Deepening Insolvency		
	Tenth Counterclaim (Deepening Insolvency)	Existing case law provides the Trust with several different methods for calculating its damages for deepening insolvency, and the Trust's expert witness has not yet concluded his analysis. Although the Trust has not yet completed its calculation of damages for this Counterclaim, one way to measure the damages would be to calculate the amount needed to pay the Trust's constituents (i.e., the general unsecured creditors) in full, plus pre- and post-judgment interest and reimbursement of expenses. As of the date of this supplement, the shortfall to general unsecured creditors is approximately 59% of the value of the claims against the Debtors' estates. ³

³ Due to active trading of claims filed in these cases and instruments issued prior to bankruptcy, the Trust believes that it is unable to provide additional information regarding the shortfall without an agreement with CSFB that: (a) the information to be provided will be covered by the Agreed Protective Order entered by the Court on October 21, 2005; and (b) CSFB will not use the information provided to engage in buying, selling, or trading of any claims and/or instruments.

CATEGORY	COUNTERCLAIM	DAMAGES SOUGHT AND GENERAL ANALYSIS
VI. Objection to Claim and Equitable Subordination		
	Objection to Claim and Fourth Counterclaim (Equitable Subordination)	The Trust seeks to disallow CSFB's claim in the amount of \$3,288,391.54 (including a contingent claim asserted by CSFB) on the grounds that such amount was not due or earned, pursuant to Bankruptcy Code section 502(d), and based on the facts supporting the Counterclaims. Alternatively, the Trust seeks to subordinate CSFB's claim to the other general unsecured creditors as a result of CSFB's inequitable conduct and unfair advantage, and the damages caused to the Debtors, all as discussed above.

Dated: May 1, 2006
Wilmington, Delaware

/s/ Marla R. Eskin

MARLA R. ESKIN (No. 2989)
KATHLEEN CAMPBELL DAVIS (No. 4229)
CAMPBELL & LEVINE, LLC
800 N. King Street, Suite 300
Wilmington, DE 19801
(302) 426-1900

and

TONY CASTAÑARES (CA SBN 47564)
STEPHAN M. RAY (CA SBN 89853)
CAROL CHOW (CA SBN 169299)
SCOTT H. YUN (CA SBN 185190)
WHITMAN L. HOLT (CA SBN 238198)
STUTMAN, TREISTER & GLATT, P.C.
1901 Avenue of the Stars, 12th Fl.
Los Angeles, CA 90067
(310) 228-5600

Special Counsel for the OHC
Liquidation Trust

Exhibit B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
Oakwood Homes Corporation, et	)	Case No. 02-13396 (PJW)
al.,)	
	)	Jointly Administered
Debtors.)	
)	
OHC Liquidation Trust,)	
)	
Plaintiff,)	
	)	Adversary Proceeding No.
v.	)	04-57060 (PJW)
)	
Credit Suisse (f/k/a Credit)	
Suisse First Boston, a Swiss)	
banking corporation), Credit)	
Suisse Securities (USA), LLC)	
(f/k/a Credit Suisse First)	
Boston LLC), Credit Suisse)	
Holdings (USA), Inc. (f/k/a)	
Credit Suisse First Boston,)	
Inc.), and Credit Suisse (USA),)	
Inc. (f/k/a Credit Suisse First)	
Boston (U.S.A.), Inc.), the)	
subsidiaries and affiliates of)	
each, and Does 1 through 100,)	
)	
Defendants.)	
)	

MOTION FOR DETERMINATION OF PLAINTIFF'S RIGHTS TO A JURY TRIAL

Plaintiff OHC Liquidation Trust (the "**Trust**"), by and through its duly appointed trustee, Alvarez & Marsal, LLC, hereby moves this Court for a determination of its Seventh Amendment rights to a jury trial with respect to certain counterclaims against the Defendants in the above-captioned adversary proceeding (collectively, "**Credit Suisse**" or the "**Defendants**").

I. **NATURE AND STAGE OF THE PROCEEDINGS**

The instant litigation finds its genesis in four identical proofs of claim filed by Credit Suisse Securities (USA), LLC (f/k/a Credit Suisse First Boston LLC) ("**CSS**") in the jointly-administered bankruptcy cases of Oakwood Homes Corporation and certain of its affiliates (collectively, the "**Debtors**" and together with the non-debtor affiliates, the "**Oakwood Entities**"). In those proofs of claim, CSS asserted an entitlement to various liquidated and unliquidated amounts, *all* of which stemmed from a certain letter agreement dated August 19, 2002 (the "**August 19 Contract**"), which agreement was attached as an exhibit to the rider CSS filed with its proofs of claim.

The Trust commenced this adversary proceeding on November 13, 2004 via an objection to CSS's proofs of claim, which objection was coupled with ten counterclaims (the "**Objection/Counterclaims**" [Docket No. 1]). The

objection/Counterclaims contained numerous allegations of fact that pre-dated the parties' execution of the August 19 Contract. (See, e.g., Objection/Counterclaims at ¶¶ 11, 18-32.) The cover page of the Objection/Counterclaims explicitly stated "**JURY TRIAL DEMANDED**," a point the Trust reiterated in the pleading's text. (See *id.* at ¶ 3 ("Plaintiff demands a jury trial of any issue triable by a jury.")) This constituted a timely jury demand.

Throughout the discovery process, the Trust uncovered various facts that allowed it to hone its theories against the Defendants. Virtually all of the discovery in this matter has concluded, however, and the Trust will soon be ready to take this adversary proceeding to trial. Critically, the case that is supported by the facts and that the Trust is prepared to try consists of two conceptually distinct parts.

First, the Trust wishes to try several causes of action that stem from Credit Suisse's actions or inactions unrelated to the August 19 Contract, most of which occurred prior to August 19, 2002. More specifically, the evidence will demonstrate that Credit Suisse enjoyed a close and intimate relationship with the Oakwood Entities. This trust and confidence between the parties gave rise to extra-contractual fiduciary duties for Credit Suisse, as well as an implied advisory contract. The evidence will further

demonstrate that Credit Suisse behaved in a fashion at odds with its clear duties - indeed, a fashion that violated even the traditional "reasonable" standard of care - and in so doing caused substantial economic harm to the Oakwood Entities. Notwithstanding these on-going breaches of duty, Credit Suisse consistently generated both massive fees for itself and assorted damages to Oakwood in the process. Accordingly, the Trust will seek to remedy Credit Suisse's long-standing and habitual misconduct at trial via an award of compensatory money damages.

Second, the Trust wishes to try several other causes of action that relate directly to the quality of performance under the August 19 Contract. The gravamen of this latter group of counterclaims is that CSS failed to fulfill its obligations under the August 19 Contract, which breaches now prevent the allowance of CSS's claims, entitle the Trust to an additional damages award, and trigger certain claims under 11 U.S.C. §§ 547 & 548.

Although both sets of counterclaims stem from Credit Suisse's malfeasance, a bright-line separates them: The first set is based upon conduct unrelated to the August 19 Contract, and thus has no logical relationship to the allowance or disallowance of CSS's claims; the second set is based upon conduct occurring on and after August 19, 2002, and is

inextricably linked to the allowance of CSS's claims. Accordingly, the Trust maintains that all its causes of action invoking facts and conduct that pre-date the parties' execution of the August 19 Contract should be tried by a jury.

The Trust has consented to a jury trial conducted by this Court pursuant to 28 U.S.C. § 157(e) and Federal Rule of Bankruptcy Procedure 9015(b), but the Defendants have informed the Trust that they do not consent to a jury trial conducted by this Court. While they have not moved to strike, the Defendants have denied that the Trust has any right to a jury trial. (See Answer and Affirmative Defenses [Docket No. 132] at ¶ 3.)

II. BASIS FOR THE MOTION

Because the Defendants do not consent to a jury trial conducted by this Court, it will be necessary for the Trust to move to withdraw the reference if it has a right to a jury trial. See, e.g., *Grove v. Bilodard Inc.*, 325 B.R. 490, 492 (D. Me. 2005) ("A bankruptcy court may not conduct a jury trial without the consent of the parties. Therefore, a valid jury demand can have the effect of mandating withdrawal to the District Court for trial." (citation omitted)). In this and other districts, a motion for withdrawal of the reference on such grounds would be timely and ripe only once an adversary proceeding is actually "trial ready," which this adversary

proceeding will be soon after the close of expert discovery. See, e.g., *Wakefern Food Corp. v. C&S Wholesale Grocers, Inc. (In re Big V Holding Corp.)*, No. 01-233, 2002 U.S. Dist. LEXIS 12609, at *17 (D. Del. July 11, 2002) ("Withdrawal of the reference based on the ground that a party is entitled to a jury trial should be deferred until the case is 'trial ready.'"). This established procedure is clear, but there are some unanswered questions in the statute and rules, including uncertainty about which court ultimately resolves the predicate question of whether a party does have a right to a jury trial.

Numerous courts have taken a similar path to resolve this indeterminacy. On the one hand, multiple district courts have denied or deferred motions to withdraw the reference, reasoning that the *bankruptcy court* is the proper arbiter of the predicate question. See, e.g., *Corzin v. Harvey (In re Commercial Maint. & Repair, Inc.)*, No. 5:06-MC-46, 2007 U.S. Dist. LEXIS 71408, at *6-11 (N.D. Ohio Sept. 25, 2007) ("[T]his Court finds that the bankruptcy court should initially decide whether the Defendants have a right to a jury trial."); *Official Comm. of Unsecured Creditors v. TSG Equity Fund L.P. (In re EnvisioNet Computer Servs.)*, 276 B.R. 1, 6-7 (D. Me. 2002) ("The bankruptcy court is an appropriate tribunal for determining whether there is a right to a trial

by jury of issues for which a jury trial is demanded.").

Likewise, several bankruptcy judges who have considered this specific issue reached a similar conclusion: bankruptcy courts should determine a party's right to a jury trial in the first instance. See, e.g., *Capital Assocs. Int'l, Inc. v. Banc One Leasing Corp. (In re Capital Assocs. Int'l, Inc.)*, No. 03-2017, 2003 Bankr. LEXIS 931, at *5 (Bankr. N.D. Tex. Aug. 6, 2003) ("The bankruptcy court determines, in the first instance, whether the parties to an adversary are entitled to a trial by jury."); *Quarles v. Wells Fargo Home Mortgage, Inc. (In re Quarles)*, 294 B.R. 729, 729 (Bankr. E.D. Ark. 2003) ("This Court initially makes a determination of whether a party is entitled to a jury trial."); *In re Wash. Mfg. Co.*, 128 B.R. 198, 200-01 (Bankr. M.D. Tenn. 1991) ("The bankruptcy court is an appropriate tribunal for determining whether there is a right to a trial by jury of issues for which a jury trial is demanded. This is so even if the bankruptcy court, after determining that a jury right exists, can not ultimately preside over the trial of the jury issues." (citation and quotations omitted)); see also *EXDS, Inc. v. RK Elec., Inc. (In re EXDS, Inc.)*, 301 B.R. 436 (Bankr. D. Del. 2003) (Walsh, J.) (deciding motion to strike jury demand). Accordingly, even though the Defendants have not moved to strike the Trust's jury demand (which they could have done at any point),

basic concepts of logic and judicial efficiency suggest that it is now an appropriate juncture for *this Court* to determine the scope of the Trust's jury trial rights.¹

III. ARGUMENT

The Seventh Amendment's guarantee that, "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved," is "preserved to the parties inviolate" by Federal Rule of Civil Procedure 38(a), applicable here per Federal Rule of Bankruptcy Procedure 9015(a). As the Supreme Court has repeatedly observed, "'[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.'" *Chauffeurs, Teamsters & Helpers v. Terry*, 494 U.S. 558, 565 (1990) (quoting *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 501 (1959) (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935))).

The seminal decision regarding parties' rights to a jury trial in bankruptcy remains *Granfinanciera, S.A. v.*

¹ If the Court determines the Trust has a right to a jury trial, then the Trust will promptly move to withdraw the reference on such grounds. If the Court determines the Trust has no right to a jury trial, then the Trust will proceed to trial before this Court.

Nordberg, 492 U.S. 33 (1989). See, e.g., *Liquidation Trust of Hechinger Inv. Co. v. Fleet Retail Fin. Group (In re Hechinger Inv. Co.)*, 327 B.R. 537, 543-46 (D. Del. 2005) (adopting and applying the *Granfinanciera* test). In *Granfinanciera*, Justice Brennan outlined the following analytic framework:

The form of our analysis is familiar. First, we compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature. ***The second stage of this analysis is more important than the first.*** [Third, if], on balance, these two factors indicate that a party is entitled to a jury trial under the Seventh Amendment, we must decide whether Congress may assign and has assigned resolution of the relevant claim to a non-Article III adjudicative body that does not use a jury as factfinder.

Id., 492 U.S. at 42 (emphasis added) (citations and quotations omitted). The third inquiry turns on whether a cause of action is part of "the restructuring of debtor-creditor relations in bankruptcy," such as in the claims-allowance process, or whether it is a "claim[] brought by a bankrupt corporation to augment the bankruptcy estate." See *id.* at 56.

Under the legal framework developed in *Granfinanciera* and subsequently applied by numerous courts, the Trust plainly is entitled to a jury trial on all its causes of action that stem from conduct unrelated to the

August 19 Contract. As explained below, some of these counterclaims are "legal" in nature, and they *all* seek a classically "legal" remedy. Furthermore, the success or failure of these counterclaims is logically separate from the allowance *vel non* of CSS's proofs of claim. Thus, because the Trust's causes of action based upon Credit Suisse's pattern of malfeasance that began before August 19, 2002 will be tried in order "to augment the bankruptcy estate," the Trust respectfully requests that the Court affirm its Seventh Amendment right to have a jury try all those counterclaims.

A. The Trust Has Asserted Legal Claims As To Which It Has A Seventh Amendment Right To A Jury Trial.

In order to determine whether the Trust has any Seventh Amendment right in the first instance, *Granfinanciera* requires this Court to examine the inherent nature of the Trust's counterclaims, as well as its requested remedy. Although some counterclaims arise from state law, the Trust's right to a jury trial remains an issue of federal law. See, e.g., *Simler v. Conner*, 372 U.S. 221, 222 (1963) ("[T]he characterization of [a] state-created claim as legal or equitable for purposes of whether a right to jury trial is indicated must be made by recourse to federal law."); *Hechinger Inv. Co.*, 327 B.R. at 543.

The first prong of the *Granfinanciera* test asks this Court to explore the nature of the Trust's pre-August 19, 2002 counterclaims against Credit Suisse. Those causes of action are essentially three: negligence, breach of implied contract, and breach of fiduciary duty. As to the first two claims, there can be no dispute that such actions would be "legal" claims in 18th-century England. See, e.g., *Ross v. Bernhard*, 396 U.S. 531, 542 (1970) (explaining how a corporation "would have been entitled to a jury's determination, at a minimum, . . . of its rights against its own directors because of their negligence"); *Donovan v. Robbins*, 579 F. Supp. 817, 822 (N.D. Ill. 1984) (claims seeking "money damages for breach of express or implied contracts are clearly legal and [] the Seventh Amendment would require a jury trial as to them"); *Redmond v. Hassan (In re Hassan)*, No. 05-6215, 2007 Bankr. LEXIS 139, at *40 (Bankr. D. Kan. Jan. 23, 2007) ("Claims for damages to a person or property based on torts such as negligence are legal claims."); *Hays v. Equitex, Inc. (In re RDM Sports Group)*, 260 B.R. 915, 919 (Bankr. N.D. Ga. 2001) ("Negligence and malpractice are legal claims.").

As to the third claim, the Trust acknowledges "that as a 'general rule' breach of fiduciary duty claims were historically within the jurisdiction of the equity courts." *Pereira v. Farace*, 413 F.3d 330, 338 (2d Cir. 2005), cert.

denied, 126 S. Ct. 2286 (2006). Thus, under *Granfinanciera's* first prong, the Trust asserts a mix of "legal" and "equitable" claims, and this fact alone gives rise to a jury trial right. See, e.g., *Ross*, 396 U.S. at 537-38 ("[W]here equitable and legal claims are joined in the same action, there is a right to jury trial on the legal claims which must not be infringed either by trying the legal issues as incidental to the equitable ones or by a court trial of a common issue existing between the claims."); *RDM Sports Group*, 260 B.R. at 919 ("That an equitable claim has been joined with three legal claims does not justify a denial of the Trustee's right to a jury trial.").

Furthermore, the analysis does not end with *Granfinanciera's* first prong. Under the second prong - which "is more important than the first," 492 U.S. at 42 - the Court must examine the nature of the remedy sought by the Trust. Pursuant to this prong, the outcome is clear: The Trust seeks compensatory money damages, which is "the classic form of legal relief." *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 210 (2002) (quoting *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255 (1993)); see also, e.g., *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477 (1962) ("[W]e think it plain that [a] claim for a money judgment is a claim wholly legal in its nature however the complaint is construed."). Indeed,

numerous courts have held that claims seeking such relief, including for breach of fiduciary duty, are "legal" claims that fall within the Seventh Amendment's scope. See, e.g., *Mirant Corp. v. Southern Co.*, 337 B.R. 107, 120 (N.D. Tex. 2006) ("Generally, claims for breach of fiduciary duty are within the exclusive jurisdiction of courts of equity. However, when a legal remedy, such as monetary relief, is sought for breach of a fiduciary duty, the action assumes legal attributes." (citations omitted)); *Design Strategies, Inc. v. Davis*, 367 F. Supp. 2d 630, 641-43 (S.D.N.Y. 2005); *Hassan*, 2007 Bankr. LEXIS 139, at *41 ("Although claims for breaching fiduciary duties were traditionally, as a general rule, equitable ones tried in the equity courts, where the remedy sought is compensatory damages, the entire claim is a legal one carrying a jury trial right."); *RDM Sports Group*, 260 B.R. at 919-20; *Stalford v. Blue Mack Transp. (In re Lands End Leasing)*, 193 B.R. 426, 433-34 (Bankr. D.N.J. 1996). There is no reason why precisely the same conclusion ought not obtain here.

The Second Circuit's recent opinion in *Pereira v. Farace* is particularly instructive. In *Pereira*, the bankruptcy trustee of Trace International Holdings, Inc. ("Trace") sued several former officers and directors of Trace for breach of fiduciary duty under Delaware state law. The

trustee asserted various claims for money damages, including for amounts improperly transferred by Trace under the defendants' watch. The defendants maintained "that they were entitled to a jury trial on the Trustee's breach of fiduciary duty claim because the nature of the underlying action was legal and the remedy sought was compensatory damages, not equitable restitution." *Id.*, 413 F.3d at 337. On appeal, the Second Circuit applied the *Granfinanciera* test and agreed with the defendants that they had a right to a jury trial. Because the fiduciary duty claim "would have been equitable in 18th century England," the outcome-determinative issue was the nature of the relief sought by the bankruptcy trustee. See *id.* at 339-41. Since the trustee sought to recover fungible money damages, rather than particular property in the defendants' possession, the second prong of the *Granfinanciera* test rendered his suit "legal" in nature and required a jury trial. See *id.* at 341. So too here; the Trust seeks damages for the harm stemming from Credit Suisse's negligence and breaches of its contractual and fiduciary duties to the Oakwood Entities, and a jury should properly determine its right to that legal relief.

The *Hechinger Investment Co.* decision is not to the contrary. There, the remedy sought by a liquidation trust was the return of funds misappropriated by director-defendants,

which the District Court held was an equitable attempt to restore the *status quo ante*. See *Liquidation Trust of Hechinger Inv. Co. v. Fleet Retail Fin. Group (In re Hechinger Inv. Co.)*, 327 B.R. 537, 544-45 (D. Del. 2005). Here, in contrast, the Trust seeks broader damages from Credit Suisse. While quantification of such damages may include Credit Suisse's ill-gotten fees, those fees are not the entirety of the Trust's damages claim; the Trust also seeks damages for harm caused by Credit Suisse's misconduct (such as the extent to which certain transactions - including the so-called "Lotus" transactions - increased the Oakwood Entities' indebtedness and caused significant losses). This fact only accents the "legal" nature of the Trust's requested remedy, thereby making *Hechinger's* analysis inapposite. See also, e.g., *Williams Elecs. Games, Inc. v. Garrity*, 366 F.3d 569, 577-78 (7th Cir. 2004) (Posner, J.) (explaining why "restitution" remains a "legal remedy" where the plaintiff seeks a damages award in the form of a generic sum of money and, as here, "is not seeking to impress a lien on particular property").

In summary, the Trust brings counterclaims against Credit Suisse that are plainly "legal" pursuant to the test set forth in *Granfinanciera*. Under the first prong, the Trust has asserted a blended mix of "legal" and "equitable" claims,

which alone is sufficient to merit a jury trial. Under the second - and more weighty - prong, however, the form of relief sought by the Trust is "legal" in nature. Accordingly, the Trust has a fundamental constitutional right to have a jury try all three of its counterclaims that are conceptually unrelated to the August 19 Contract. This inviolate right would be enforceable outside of bankruptcy or if Credit Suisse were a non-creditor defendant. As explained below, the fact that CSS has filed proofs of claim based on the August 19 Contract does not alter the analysis.

B. The Trust Has Not Implicitly Waived Its Jury Trial Right Because Its Legal Claims Are Not Integral To The "Claims-Allowance Process," But Rather Will "Augment The Estate."

The case law is clear that when a cause of action "falls within the process of the allowance and disallowance of claims," neither the debtor's estate nor the defendant has a Seventh Amendment right to trial by jury "because [the] claim has been converted from a legal one into an equitable dispute over a share of the estate." See, e.g., *Billing v. Ravin, Greenberg & Zackin, P.A.*, 22 F.3d 1242, 1253 (3d Cir. 1994), cert. denied, 513 U.S. 999 (1994). In contrast, when a legal cause of action is not integrally related to the claims-allowance process, but instead seeks to garner additional funds that will "augment" the bankruptcy estate, both the

debtor and the defendant retain their constitutional right to have a jury try such an action. See, e.g., *Germain v. Conn. Nat'l Bank*, 988 F.2d 1323, 1327 (2d Cir. 1996) (explaining how "suits . . . which would augment the estate but which have no effect on the allowance of a creditor's claim simply cannot be part of the claims-allowance process").²

² See also, e.g., *Mirant Corp. v. Southern Co.*, 337 B.R. 107, 121 (N.D. Tex. 2006) (holding that right to jury trial existed when claims were brought "to augment the bankruptcy estate" and "simply will not directly implicate the bankruptcy claim resolution process"); *R&F Intellectual Prop. Acquisition, Inc. v. Hantover, Inc. (In re Dynamic Tooling Sys.)*, No. 06-5476, 2007 Bankr. LEXIS 2090, at *20-23 (Bankr. D. Kan. June 12, 2007) (holding that creditor that filed proof of claim did not waive its jury trial rights with respect to plaintiff's "legal claims and tort counts," including claims for aiding and abetting breach of fiduciary duty and "deepening insolvency," because those claims were not based on "matters integrally tied up in the allowance or disallowance of the [creditor's] claim"); *Rickel & Assocs., Inc. v. Smith (In re Rickel & Assocs., Inc.)*, 320 B.R. 513, 517 (Bankr. S.D.N.Y. 2005) (creditor who filed proof of claim against bankruptcy estate retained right to jury trial on breach of fiduciary duty claim because plaintiffs "seek money damages, and the determination of the breach of fiduciary duty claim will not affect the allowability or priority of [the creditor's] proof of claim in the bankruptcy case"); *WSC, Inc. v. Home Depot, Inc. (In re WSC, Inc.)*, 286 B.R. 321, 329 (Bankr. M.D. Tenn. 2002) (explaining how "a debtor forfeits its jury trial right only with respect to causes of action 'integral to the restructuring of the debtor-creditor relationship,'" and not "when the cause of action involves augmenting the bankruptcy estate rather than adjudicating claims" (quoting *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990))); *Hays v. Equitex, Inc. (In re RDM Sports Group)*, 260 B.R. 915, 925 (Bankr. N.D. Ga. 2001) (stating that defendant retained right to jury trial regarding claims asserted "to generate funds for distribution to creditors" because such claims "do not have anything to do with the claims process and/or the restructuring of the debtor-creditor relationship").

Accordingly, the critical task for any court faced with this issue is to "ask whether the resolution of the particular dispute at issue is **necessarily part of the process** of the disallowance and allowance of claims" against the bankruptcy estate. *Billing*, 22 F.3d at 1252 n.14 (emphasis added).³

³ This precise analytic framework has been applied where, as here, "counterclaims" are proffered by the representative of the debtor's estate in response to a creditor's proof of claim. As one court explained:

Unlike the act of filing a proof of claim, **the assertion of a counterclaim by the debtor does not automatically result in waiver of the right to trial by jury on those counterclaims.** Moreover, counterclaims such as the ones in this case often go beyond the mere allowance or disallowance of the filed claim to seek affirmative recovery against the claimant. The Court must consider whether the counterclaims are "integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's equity jurisdiction," which would dispense with [the] right to a jury trial on those counterclaims.

McClelland v. Braverman Kaskey & Caprara, P.C. (In re McClelland), 332 B.R. 90, 95 (Bankr. S.D.N.Y. 2005) (emphasis added) (quoting *Langenkamp v. Culp*, 498 U.S. 42, 44-45 (1990)). In *McClelland*, the estate's counterclaims were "integrally related to the allowance or disallowance of the [creditor-Claimants'] claims" because "[t]he very services for which Claimants seek compensation in their proofs of claim are the same services, for the same time periods during which the Debtor counterclaims that the Claimants engaged in negligence and malpractice." See *id.* at 97-98; see also, e.g., *Dietert v. Dietert (In re Dietert)*, 271 B.R. 499, 507 (Bankr. S.D. Tex. 2002) (explaining how a counterclaim to a proof of claim "can be adjudicated by the bankruptcy judge without a jury and the bankruptcy judge can award a judgment for affirmative relief against the creditor if, **and only if, all** elements necessary to adjudication of the counterclaim are part of the adjudication of the objection to claim" (emphasis added)). As explained in the text, that clearly is not the case here; CSS's proofs of claim

Here, the Trust's counterclaims which are based upon a pattern of behavior starting long before August 19, 2002 are not "necessarily part the process" of determining whether CSS's claims should be allowed. The Trust's claims for breach of contractual and fiduciary duties, as well as negligence, arise out of separate transactions and conduct, undertaken during a much longer period of time, and by corporate entities other than CSS. Moreover, the Trust's causes of action unrelated to the August 19 Contract are not products of the Bankruptcy Code; they are state law claims that could have been asserted by the Oakwood Entities against the Defendants prior to August 19, 2002 (although the true magnitude of the damages may not have been apparent until after the petition date), and later became property of Oakwood's bankruptcy estate pursuant to 11 U.S.C. § 541(a). Thus, these counterclaims are even further removed from the "claims-allowance process" than was the fraudulent transfer action in *Granfinanciera* or the preference action in *Langenkamp* since the Trust's success on such causes of action could not even

are based solely upon "services" allegedly provided to the Oakwood Entities between August 19, 2002 and November 15, 2002, but the Trust's counterclaims on which it seeks a jury trial stem from other "services" provided to the Oakwood Entities in a different time period. Accordingly, the Trust's counterclaims are not "integrally related to the allowance or disallowance" of CSS's claims against Oakwood's bankruptcy estate.

theoretically be grounds for disallowance of CSS's claims under 11 U.S.C. § 502(d).

Indeed, as a purely logical matter, the counterclaims that encompass pre-August 19, 2002 conduct are utterly separate from CSS's proof of claim; it is conceivable that the Trust could succeed on some or all of those counterclaims yet fail in its objection to CSS's claims, or vice versa. Although judicial economy likely requires that all the Trust's counterclaims be tried at one time - with a jury resolving issues of fact and law pertaining to the Trust's legal claims as to which it retains a Seventh Amendment right, and a court resolving the remaining issues - such a process is not strictly necessary; the pre-August 19, 2002 counterclaims could be tried as a completely separate action, which trial could occur either before or after CSS's proofs of claim are resolved. This reality demonstrates that such counterclaims are not part of the "restructuring of debtor-creditor relations in bankruptcy," but rather are "claims brought by a bankrupt corporation to augment the bankruptcy estate." *Granfinanciera*, 492 U.S. at 56. As such, the procedural posture of this adversary proceeding does not affect the Trust's Seventh Amendment rights, and because certain counterclaims are "legal" under the *Granfinanciera* test, the Trust retains the sacrosanct right to a jury trial.

This conclusion is further buttressed by a brief review of two cases involving similar facts.

First, in *Germain v. Connecticut National Bank*, 988 F.2d 1323 (2d Cir. 1993), the bankruptcy trustee asserted several "lender liability" claims against a large bank ("CNB" or the "Bank") that had filed a proof of claim against the estate. The trustee argued "that because his claims are legal in nature and because he seeks only legal relief in the form of money damages, he is entitled to a jury trial under the Seventh Amendment." See *id.* at 1325. CNB disagreed, insisting that the estate lost its right to a jury trial when CNB filed its proof of claim against the estate. The Second Circuit firmly rejected CNB's position:

Resolution of the Trustee's action is not required in order to determine whether to allow CNB's claim as a creditor in the bankruptcy proceeding. The Trustee asks for money damages to compensate the estate for the destruction of the debtor's business. If he wins, the estate is enlarged, and this may affect the amount the Bank and its fellow creditors ultimately recover on their claims, but it has no effect whatever on the allowance of the Bank's claims. Thus, a court could allow the Bank's claim before hearing argument on the Trustee's complaint, and this chronology would be both logical and consistent with the Bankruptcy Code.

Id. at 1327; see also *id.* at 1330 ("[N]either precedent nor logic supports the proposition that either the creditor or the

debtor automatically waives all right to a jury trial whenever a proof of claim is filed."). Since CNB's proof of claim and the trustee's causes of action were based on different sets of facts, the latter did "not involve any other creditor's rights or the relationship among the creditors as a group or between the debtor and another creditor," which meant they had "nothing to do with the essence of the bankruptcy regulatory scheme of allowing or reordering claims." See *id.* at 1331. Consequently, the Second Circuit concluded the trustee's "action involves private rights and should be tried before a jury, if that is the Trustee's choice," because doing so would not affect the bankruptcy court's power "to readjust debtor-creditor relations and reorder creditor claims equitably and completely." See *id.* at 1332.

The Second Circuit's analysis in *Germain* applies to this adversary proceeding with incredible force and should be outcome-determinative.⁴ Like CNB, CSS has filed proofs of

⁴ The U.S. Court of Appeals for the Third Circuit discussed *Germain* at some length in the *Billing* case and ultimately distinguished the Second Circuit's decision on the facts. See 22 F.3d at 1251-52. Specifically, in *Billing*, the estate's malpractice action had such a "close connection" to a law firm's proof of claim for attorneys' fees - i.e., the proof of claim and the suit arose from the same operative transactions and facts, and "the debtors' malpractice suit mirror[ed] its objection to the allowance of attorneys' fees" - "that 'the merits of the malpractice claims **must be resolved before** there can be a resolution of the fee dispute.'" *Id.* at 1252 (emphasis added) (quoting *Billing v. Ravin Greenberg & Zackin, P.A. (In re Billing)*, 150 B.R. 563, 570

claim against the estate and is the target of litigation based upon facts unrelated to its proofs of claim. As a result, all of the Trust's counterclaims which are based on events beginning long before the August 19 Contract was executed are simply not part of the "process of allowance or disallowance of claims," and this means the Trust necessarily retains the full spectrum of its Seventh Amendment rights as to each of those causes of action.

Second and more recently, in *Mirant Corp. v. Southern Co.*, 337 B.R. 107 (N.D. Tex. 2006), Southern - a defendant in an adversary proceeding initiated by the debtors and the creditors' committee - moved to withdraw the reference on the grounds that, *inter alia*, it was entitled to a jury trial on certain causes of action. The underlying complaint asserted six counts against Southern, including (i) a count seeking compensatory damages for Southern's alleged assistance with various destructive transactions and (ii) a count

n.2 (D.N.J. 1993)). That "the interrelated nature of the actions" led the Third Circuit "to conclude that the debtors' allegations of malpractice are part of the process of allowance and disallowance of claims," *id.*, is consistent with the mode of analysis deployed in the *McClelland* case discussed *supra* note 3. Critically, both *Billing* and *McClelland* are inapposite here because several of the Trust's counterclaims are based on a different, and earlier, set of facts than those undergirding CSS's proofs of claim. The grounds on which the Third Circuit distinguished *Germain* are absent, and the Second Circuit's well-reasoned decision should be controlling, here - like *Germain*, the Trust may choose to try its claims before a jury.

objecting to various claims filed by Southern in the debtors' bankruptcy cases. See *id.* at 110-11 (describing "Count IV" and "Count V"). Southern asserted that "it has a right to a jury trial with respect to the fraudulent transfer and conveyance claims, the fiduciary duty claims, and the illegal dividend claims." *Id.* at 112. The debtors argued in response, and the bankruptcy court agreed below, that "any right Southern might have had to a jury trial was lost upon the filing of its claims against debtors in the chapter 11 cases." See *id.* at 113. The district court reversed this holding.

The district court first examined the plaintiffs' requested relief - monetary damages - and concluded that such a request gave Southern a right to a jury trial on the underlying claims, including the claim for breach of fiduciary duty. See *id.* at 120-21. The court then addressed the contention that Southern's jury trial rights were eliminated because it had filed proofs of claim to which the debtors objected:

Resolution of the legal claims raised in this action will not directly affect the liability or priority of Southern's proofs of claim in the bankruptcy cases, nor do the legal claims asserted in this action arise as part of the process of allowance or disallowance of claims in bankruptcy. Rather, they essentially are claims brought by the debtors and Committee to

augment the bankruptcy estate. The determinations of the legal claims in this action simply will not directly implicate the bankruptcy claim resolution process, nor will the power of the bankruptcy court to readjust the debtor-creditor relations and reorder creditor claims equitably and completely be diminished if the legal claims in this action are tried to a jury.

Id. at 121 (citations omitted).

Thus, notwithstanding the fact that "Count V" of the *very same pleading* was an express objection to Southern's proofs of claim, Southern retained its right to a jury trial with respect to the other counts because those causes of action did not go "directly to the process of allowance and disallowance of claims." See *id.* at 122; see also *id.* ("[T]he mere fact that the outcome of a dispute could have the effect of enlarging the estate does not mean that the dispute will have any effect on the allowance of a disputant's claims in bankruptcy."). The principal difference between the instant case and *Mirant* is the juxtaposition of the parties - here the plaintiff Trust seeks a jury trial, whereas in *Mirant* the defendant creditor sought a jury trial. Both cases involve an objection to proofs of claim that happened to be bundled in the same pleading with other, "legal" causes of action based upon different facts. This happenstance of pleading is not sufficient to make the "legal" claims part of the claims-allowance process, which means the Trust's right to a jury is

at least as robust as Southern's right in *Mirant*. See also, e.g., *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477-78 (1962) ("[T]he constitutional right to trial by jury cannot be made to depend upon the choice of words used in the pleadings."); *Lee Way Holding Co. v. Liberty Mut. Ins. Co. (In re Lee Way Holding Co.)*, 118 B.R. 544, 553 (Bankr. S.D. Ohio 1990) (court noted that, even if it agreed that bankruptcy trustee "had originally asserted an equitable claim, . . . the constitutional right to a jury trial does not rest solely on the words used in the pleadings," including in the plaintiff-trustee's complaint).

The *Hechinger Investment Co.* decision is a useful contrast to *Germain* and *Mirant*. There, a liquidation trust had objected to the claims of the Chase Manhattan Bank ("Chase") and the Fleet Retail Financial Group ("Fleet") on the grounds that the related liens were avoidable as fraudulent transfers. See *Liquidation Trust of Hechinger Inv. Co. v. Fleet Retail Fin. Group (In re Hechinger Inv. Co.)*, 327 B.R. 537, 545-46 (D. Del. 2005). That trust subsequently initiated litigation against Chase, Fleet, and others, whereby the plaintiff-trust alleged that payments made in connection with the secured debt were fraudulent conveyances. See *id.* at 546. The trust demanded a jury trial on its fraudulent conveyance claims, but the District Court concluded "that

plaintiff's subsequently filed fraudulent conveyance suit mirrors its objection to" Chase and Fleet's claims, which mean those claims were "part of the process of allowance and disallowance of claims and are not entitled to a jury trial." See *id.* at 546 (citing *Billing*, 22 F.3d at 1252). The District Court's conclusion once again highlights how there must be a tight factual overlap between the estate's claim objections and its affirmative litigation if the estate's jury trial rights are to be deemed implicitly waived. That necessary factual overlap is conspicuously absent here.

In the final analysis, the outcomes in *Germain*, *Mirant*, and *Hechinger* only further cement the conclusion that certain of the Trust's counterclaims are not "necessarily part of the process of the disallowance and allowance of claims." *Billing*, 22 F.3d at 1252 n.14. To the contrary, those counterclaims - based upon different facts occurring during a different period of time - are clearly intended to augment the Oakwood bankruptcy estate by redressing the lasting damage caused by Credit Suisse's misconduct. Hence, the Trust continues to retain its Seventh Amendment right to have each counterclaim unrelated to the August 19 Contract that is of a "legal" nature - which, based upon the remedy sought by the Trust, includes them all - tried by a jury.

IV. CONCLUSION

For the reasons and based on the authorities presented above, the Trust requests that this Court affirm the continuing validity of its demand for a jury trial of all its counterclaims that stem from the Defendants' pattern of malfeasance that began long before August 19, 2002 and are not related to CSS's claims.

Respectfully submitted,

Dated: October 5, 2007
Wilmington, Delaware

/s/Marla Rosoff Eskin
MARLA ROSOFF ESKIN (No. 2989),
KATHLEEN CAMPBELL DAVIS (No. 4229)
CAMPBELL & LEVINE, LLC
800 N. King Street, Suite 300
Wilmington, DE 19801
(302) 426-1900

-and-

TONY CASTAÑARES (CA SBN 47564)
STEPHAN M. RAY (CA SBN 89853)
SCOTT H. YUN (CA SBN 185190)
WHITMAN L. HOLT (CA SBN 238198)
STUTMAN, TREISTER & GLATT, P.C.
1901 Avenue of the Stars, 12th Fl.
Los Angeles, CA 90067
(310) 228-5600

Special Counsel for the
OHC Liquidation Trust

TABLE OF CONTENTS

	<u>Page</u>
I. NATURE AND STAGE OF THE PROCEEDINGS	1
II. BASIS FOR THE MOTION	4
III. ARGUMENT	7
A. The Trust Has Asserted Legal Claims As To Which It Has A Seventh Amendment Right To A Jury Trial.	9
B. The Trust Has Not Implicitly Waived Its Jury Trial Right Because Its Legal Claims Are Not Integral To The "Claims-Allowance Process," But Rather Will "Augment The Estate."	15
IV. CONCLUSION	27

TABLE OF AUTHORITIES

CASES

<i>Beacon Theatres, Inc. v. Westover</i> , 359 U.S. 500 (1959)	7
<i>Billing v. Ravin, Greenberg & Zackin, P.A.</i> , 22 F.3d 1242 (3d Cir. 1994), cert. denied, 513 U.S. 999 (1994)	<i>passim</i>
<i>Capital Assocs. Int'l, Inc. v. Banc One Leasing Corp. (In re Capital Assocs. Int'l, Inc.)</i> , No. 03-2017, 2003 Bankr. LEXIS 931 (Bankr. N.D. Tex. Aug. 6, 2003)	5
<i>Chauffeurs, Teamsters & Helpers v. Terry</i> , 494 U.S. 558 (1990)	7
<i>Corzin v. Harvey (In re Commercial Maint. & Repair, Inc.)</i> , No. 5:06-MC-46, 2007 U.S. Dist. LEXIS 71408 (N.D. Ohio Sept. 25, 2007)	5
<i>Dairy Queen, Inc. v. Wood</i> , 369 U.S. 469 (1962)	11, 23
<i>Design Strategies, Inc. v. Davis</i> , 367 F. Supp. 2d 630 (S.D.N.Y. 2005)	11
<i>Dietert v. Dietert (In re Dietert)</i> , 271 B.R. 499 (Bankr. S.D. Tex. 2002)	16
<i>Dimick v. Schiedt</i> , 293 U.S. 474 (1935)	7
<i>Donovan v. Robbins</i> , 579 F. Supp. 817 (N.D. Ill. 1984)	9
<i>EXDS, Inc. v. RK Elec., Inc. (In re EXDS, Inc.)</i> , 301 B.R. 436 (Bankr. D. Del. 2003)	6
<i>Germain v. Conn. Nat'l Bank</i> , 988 F.2d 1323 (2d Cir. 1996)	<i>passim</i>
<i>Granfinanciera, S.A. v. Nordberg</i> , 492 U.S. 33 (1989)	<i>passim</i>
<i>Great-West Life & Annuity Ins. Co. v. Knudson</i> , 534 U.S. 204 (2002)	11

<i>Grove v. Bilodard Inc.</i> , 325 B.R. 490 (D. Me. 2005)	4
<i>Hays v. Equitex, Inc. (In re RDM Sports Group)</i> , 260 B.R. 915 (Bankr. N.D. Ga. 2001)	10, 11, 15
<i>Langenkamp v. Culp</i> , 498 U.S. 42 (1990)	15, 16, 17
<i>Lee Way Holding Co. v. Liberty Mut. Ins. Co. (In re Lee Way Holding Co.)</i> , 118 B.R. 544 (Bankr. S.D. Ohio 1990)	23
<i>Liquidation Trust of Hechinger Inv. Co. v. Fleet Retail Fin. Group (In re Hechinger Inv. Co.)</i> , 327 B.R. 537 (D. Del. 2005)	<i>passim</i>
<i>McClelland v. Braverman Kaskey & Caprara, P.C. (In re McClelland)</i> , 332 B.R. 90 (Bankr. S.D.N.Y. 2005)	16, 20
<i>Mertens v. Hewitt Assocs.</i> , 508 U.S. 248 (1993)	11
<i>Mirant Corp. v. Southern Co.</i> , 337 B.R. 107 (N.D. Tex. 2006)	<i>passim</i>
<i>Official Comm. of Unsecured Creditors v. TSG Equity Fund L.P. (In re EnvisionNet Computer Servs.)</i> , 276 B.R. 1 (D. Me. 2002)	5
<i>Pereira v. Farace</i> , 413 F.3d 330 (2d Cir. 2005), <i>cert. denied</i> , 126 S. Ct. 2286 (2006)	10, 12
<i>Quarles v. Wells Fargo Home Mortgage, Inc. (In re Quarles)</i> , 294 B.R. 729 (Bankr. E.D. Ark. 2003)	5
<i>R&F Intellectual Prop. Acquisition, Inc. v. Hantover, Inc. (In re Dynamic Tooling Sys.)</i> , No. 06-5476, 2007 Bankr. LEXIS 2090 (Bankr. D. Kan. June 12, 2007)	15
<i>Redmond v. Hassan (In re Hassan)</i> , No. 05-6215, 2007 Bankr. LEXIS 139 (Bankr. D. Kan. Jan. 23, 2007)	9, 11

<i>Rickel & Assocs., Inc. v. Smith (In re Rickel & Assocs., Inc.),</i> 320 B.R. 513 (Bankr. S.D.N.Y. 2005)	15
<i>Ross v. Bernhard,</i> 396 U.S. 531 (1970)	9, 10
<i>Simler v. Conner,</i> 372 U.S. 221 (1963)	9
<i>Stalford v. Blue Mack Transp. (In re Lands End Leasing),</i> 193 B.R. 426 (Bankr. D.N.J. 1996)	11
<i>Wakefern Food Corp. v. C&S Wholesale Grocers, Inc. (In re Big V Holding Corp.),</i> No. 01-233, 2002 U.S. Dist. LEXIS 12609 (D. Del. July 11, 2002)	4
<i>In re Wash. Mfg. Co.,</i> 128 B.R. 198 (Bankr. M.D. Tenn. 1991)	6
<i>Williams Elecs. Games, Inc. v. Garrity,</i> 366 F.3d 569 (7th Cir. 2004)	13
<i>WSC, Inc. v. Home Depot, Inc. (In re WSC, Inc.),</i> 286 B.R. 321 (Bankr. M.D. Tenn. 2002)	15

STATUTES AND RULES

11 U.S.C. § 502(d)	17
11 U.S.C. § 541(a)	17
11 U.S.C. § 547	3
11 U.S.C. § 548	3
28 U.S.C. § 157(e)	3
FED. R. BANKR. P. 9015	4, 7
FED. R. CIV. P. 38(a)	7

OTHER AUTHORITIES

U.S. CONST. amend. VII	<i>passim</i>
------------------------------	---------------

Exhibit C

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
Oakwood Homes Corporation, et	)	Case No. 02-13396 (PJW)
al.,)	
	)	Jointly Administered
Debtors.)	
)	
OHC Liquidation Trust,)	
)	
Plaintiff,)	
	)	Adversary Proceeding No.
v.	)	04-57060 (PJW)
)	
Credit Suisse (f/k/a Credit)	
Suisse First Boston, a Swiss)	
banking corporation), Credit)	
Suisse Securities (USA), LLC)	
(f/k/a Credit Suisse First)	
Boston LLC), Credit Suisse	)	Re: Adv. Proc. D.I. 198
Holdings (USA), Inc. (f/k/a)	
Credit Suisse First Boston,)	
Inc.), and Credit Suisse (USA),)	
Inc. (f/k/a Credit Suisse First)	
Boston (U.S.A.), Inc.), the)	
subsidiaries and affiliates of)	
each, and Does 1 through 100,)	
)	
Defendants.)	
)	

**REPLY BRIEF IN SUPPORT OF THE
MOTION FOR DETERMINATION OF PLAINTIFF'S RIGHTS TO A JURY TRIAL**

TABLE OF CONTENTS

	<u>Page</u>
I. PRELIMINARY STATEMENT	1
II. ARGUMENT	3
A. The Defendants' Forced Attempt To Recast This Adversary Proceeding As One That Is Purely "Equitable" Must Fail; Plaintiff Seeks "Legal" Relief Based Upon "Legal" Claims.	4
B. Because Several Claims And Issues Are Logically Distinct From The Allowance Vel Non Of CSS's Proofs Of Claim, The Defendants' Implied Waiver Theory Collapses Completely.	8
C. A Pre-Petition Contract Waiving Certain Debtors' Jury Rights As Against One Defendant, And Only With Respect To That Specific Contract, Has No Effect On This Proceeding.	14
D. To The Extent That The Court Considers This To Be A Close Question, It Should Err On The Side Of Preserving And Protecting Plaintiff's Core Constitutional Rights.	19
III. CONCLUSION	20

TABLE OF AUTHORITIES

CASES

<i>Aetna Ins. Co. v. Kennedy</i> , 301 U.S. 389 (1937)	14
<i>Balaber-Strauss v. N.Y. Tel. (In re Coin Phones, Inc.)</i> , 203 B.R. 184 (Bankr. S.D.N.Y. 1996)	6
<i>Beacon Theatres, Inc. v. Westover</i> , 359 U.S. 500 (1959)	19
<i>Billing v. Ravin, Greenberg & Zackin, P.A.</i> , 22 F.3d 1242 (3d Cir. 1994), cert. denied, 513 U.S. 999 (1994)	10, 12, 13
<i>Cantor v. Perelman</i> , No. 97-586-KAJ, 2006 WL 318666 (D. Del. Feb. 10, 2006)	7
<i>Capital Assocs. Int'l, Inc. v. Banc One Leasing Corp. (In re Capital Assocs. Int'l, Inc.)</i> , No. 03-2017, 2003 Bankr. LEXIS 931 (Bankr. N.D. Tex. Aug. 6, 2003)	14
<i>In re Crown Vantage, Inc.</i> , No. 02-03836, 2002 U.S. Dist. LEXIS 26109 (N.D. Cal. Dec. 16, 2002)	12, 13
<i>Dairy Queen, Inc. v. Wood</i> , 369 U.S. 469 (1962)	1, 4, 8
<i>Dastgheib v. Genentech, Inc.</i> , 457 F. Supp. 2d 536 (E.D. Pa. 2006)	6
<i>EEOC v. Blue Star Foods, Inc.</i> , No. 78-5-W, 1980 U.S. Dist. LEXIS 11131 (S.D. Iowa Mar. 7, 1980)	19
<i>EEOC v. Waffle House, Inc.</i> , 534 U.S. 279 (2002)	16
<i>Educ. Testing Servs. v. Katzman</i> , 670 F. Supp. 1237 (D.N.J. 1987)	19
<i>First Union Nat'l Bank v. United States</i> , 164 F. Supp. 2d 660 (E.D. Pa. 2001)	17, 18
<i>In re Franklin Towne Lodge Ltd. P'ship</i> , No. 91-2702, 1992 U.S. Dist. LEXIS 18817 (E.D. Pa. Nov. 25, 1992)	8

<i>Germain v. Conn. Nat'l Bank</i> , 988 F.2d 1323 (2d Cir. 1993)	10, 11, 13
<i>In re Globe Parcel Serv., Inc.</i> , 75 B.R. 381 (E.D. Pa. 1987)	8
<i>Granfinanciera, S.A. v. Nordberg</i> , 492 U.S. 33 (1989)	4, 5
<i>Hays v. Equitex, Inc. (In re RDM Sports Group)</i> , 260 B.R. 915 (Bankr. N.D. Ga. 2001)	9
<i>Hulsey v. West</i> , 966 F.2d 579 (10th Cir. 1992)	16
<i>Jennings v. McCormick</i> , 154 F.3d 542 (5th Cir. 1998)	14
<i>Med. Air Tech. Corp. v. Marwan Inv., Inc.</i> , 303 F.3d 11 (1st Cir. 2002)	14, 16
<i>Mirant Corp. v. Southern Co.</i> , 337 B.R. 107 (N.D. Tex. 2006)	10, 11, 12, 13
<i>NDEP Corp. v. Handl-It, Inc. (In re NDEP Corp.)</i> , 203 B.R. 905 (D. Del. 1996)	8, 10, 13
<i>Nat'l Acceptance Co. v. Myca Prods., Inc.</i> , 381 F. Supp. 269 (W.D. Pa. 1974)	14, 17
<i>Nat'l Union Elec. Corp. v. Wilson</i> , 434 F.2d 986 (6th Cir. 1970)	3
<i>Nichols Motorcycle Supply Inc. v. Dunlop Tire Corp.</i> , 913 F. Supp. 1088 (N.D. Ill. 1995)	17
<i>Nisselson v. Empyrean Inv. Fund, L.P. (In re MarketXT Holdings Corp.)</i> , 336 B.R. 39 (Bankr. S.D.N.Y. 2006)	15
<i>OHC Liquidation Trust v. Credit Suisse First Boston (In re Oakwood Homes Corp.)</i> , 340 B.R. 510 (Bankr. D. Del. 2006)	17
<i>Paracor Fin., Inc. v. GE Capital Corp.</i> , 96 F.3d 1151 (9th Cir. 1996)	16
<i>Parsons v. Bedford</i> , 3 Pet. 433 (1830)	5
<i>Prudential Oil Corp. v. Phillips Petrol. Co.</i> , 392 F. Supp. 1018 (S.D.N.Y. 1975)	19

<i>Reboy v. Cozzi Iron & Metal, Inc.</i> , 9 F.3d 1303 (7th Cir. 1993)	14
<i>Ross v. Bernhard</i> , 396 U.S. 531 (1970)	8, 13
<i>Thermo-Stitch, Inc. v. Chemi-Cord Processing Corp.</i> , 294 F.2d 486 (5th Cir. 1961)	4
<i>Tracinda Corp. v. DaimlerChrysler AG</i> , No. 05-2363, 2007 U.S. App. LEXIS 22221 (3d Cir. Sept. 18, 2007)	16
<i>Tray-Wrap, Inc. v. Six L's Packing Co.</i> , 984 F.2d 65 (2d Cir. 1993)	3
<i>Turner v. Johnson & Johnson</i> , 809 F.2d 90 (1st Cir. 1986)	19
<i>United States v. McAlister</i> , 630 F.2d 772 (10th Cir. 1980)	19
<i>Urban Outfitters, Inc. v. 166 Enter. Corp.</i> , 136 F. Supp. 2d 273 (S.D.N.Y. 2001)	14
<i>Williams Elecs. Games, Inc. v. Garrity</i> 366 F.3d 569 (7th Cir. 2004)	6

STATUTES AND RULES

FED. R. CIV. P. 38(b)	3
-----------------------------	---

OTHER AUTHORITIES

8 MOORE'S FEDERAL PRACTICE § 39.12[2] (Matthew Bender 3d ed. rev. 2007)	10
U.S. CONST. amend. VII	<i>passim</i>

Plaintiff¹ respectfully submits this Reply Brief to further support Plaintiff's motion for a determination of its Seventh Amendment rights to a jury trial and to address the Defendants' October 12, 2007 Response thereto [Docket No. 201] (the "**Defendants' Brief**"; cited herein as "Def. Br. at ____").

I. **PRELIMINARY STATEMENT**

Once one sifts through the rhetoric and insinuation that lard the Defendants' Brief, Credit Suisse's strategy is clear: Rather than respond to Plaintiff's position on the merits, Credit Suisse muddies the waters with a barrage of irrelevant points. But even brief analysis of each component of Credit Suisse's jury-rigged construct reveals glaring flaws, which collapse Credit Suisse's Response completely.

First, the Defendants' attempt to implode two of the Trust's claims, as support for their "mixed relief" theory, is inappropriate. The Defendants cannot rewrite the borders of Plaintiff's claims and remedies or erase their inherently "legal" nature. Further, even on its own terms, their "mixed relief" theory is akin to the "incidental" theory rejected long ago by *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962).

Second, the Defendants' categorical "waiver" theory, under which there are **no** jury rights when debtors or trustees sue in bankruptcy court, is likewise contrary to Supreme Court precedent, as well as case law in this circuit. The proper

¹ All capitalized terms used but not otherwise defined in this Reply Brief have the meaning given such terms in Plaintiff's initial motion [Docket No. 198] (the "**Opening Brief**").

inquiry is whether **every one** of Plaintiff's counterclaims is a part of the "claims-allowance process." Here, the Defendants try to have the August 19 Contract - which covers only the last 88 days of a multi-year relationship - be the tail that wags the constitutional rights dog. This strategy ignores the fact that three counterclaims are unrelated to CSS's claims.

Third, the Defendants also try to seek asylum in a contractual jury waiver. But they overlook the inconvenient truth that this waiver was limited in scope and was only signed by a handful of the parties to this action. Plus, even if that contractual waiver could somehow be read to apply here, the Defendants have still failed to meet their burden of proving that the waiver was enforceable in the first instance.

Fourth, the Defendants gloss over the fact that they are asking this Court to curtail the constitutional right to a jury as no court has done before. Such a result not only would be unprecedented, but also will do extreme violence to the long-standing principle that every close case should be resolved in favor of protecting parties' fundamental rights.

At bottom, the facts and the case law clearly ground four basic conclusions: (1) Plaintiff properly demanded a jury trial; (2) because Plaintiff is asserting "legal" claims and seeking "legal" relief, it has a Seventh Amendment right to a jury; (3) neither Plaintiff nor the Debtors ever waived that fundamental right; and (4) three of Plaintiff's counterclaims are unrelated to the "claims-allowance process." As such, this Court should affirm Plaintiff's rights to a jury trial.

II. ARGUMENT

The Defendants' Brief rests on three slim ledges:

- (1) each and every aspect of this action is "equitable" or "mixed" in nature (see Def. Br. at 7-12);
- (2) by filing the Objection/Counterclaims in this Court, Plaintiff somehow made **all** its counterclaims part of the "claims-allowance process" or otherwise destroyed the right to a jury² (see Def. Br. at 13-21); and
- (3) because certain of the Debtors signed an agreement with "a Defendant" that purported to waive those entities' rights **as to actions relating to that contract**, Plaintiff somehow has no jury trial rights as to **any** of the Defendants (see Def. Br. at 21-24).

The fatal flaws pervading each premise are discussed in turn.

Before turning to substance, Plaintiff notes that the Defendants concede that *this Court* may properly determine this issue. (See Def. Br. at 5.) Plaintiff disagrees that the Defendants can collaterally attack a ruling by this Court before the District Court, but leaves that debate for another day. The Trust also disputes the unfounded theory that it has done anything to waive its ability now to request a jury trial or to include that issue in any appeal from a final order. (See Def. Br. at 1, 5-6, 6 n.4.) To be clear and to avoid any future misunderstanding, Plaintiff has waived nothing.³

² In an attempt to tumesce their brief, the Defendants suggest this point supports two separate arguments. As explained on pages 8-10, *infra*, this framework is incorrect; the underlying issue is always whether "legal" claims were converted to "equitable" ones via the "claims-allowance process," regardless of the forum.

³ As the Second Circuit has explained, once a proper jury demand is made under Rule 38(b), "[t]he federal rules have cloaked the waiver process in a ritual that is almost sacramental." *Tray-Wrap, Inc. v. Six L's Packing Co.*, 984 F.2d 65, 68 (2d Cir.

A. The Defendants' Forced Attempt To Recast This Adversary Proceeding As One That Is Purely "Equitable" Must Fail; Plaintiff Seeks "Legal" Relief Based Upon "Legal" Claims.

The Defendants' first argument attempts to respond to the analysis set forth on pages 9-15 of the Opening Brief, wherein Plaintiff applied the initial prongs of *Granfinanciera* to this action. Credit Suisse responds by attempting to cram Plaintiff's claims and remedies into some "mixed relief" box. (See Def. Br. at 8-11.) As explained below, this attempt fails because it presumes an unduly myopic view of Plaintiff's claims and remedies. Even were that not so, however, Credit Suisse's "mixed relief" theory founders on its face. As the Supreme Court explained in *Dairy Queen, Inc. v. Wood*, "[i]t would make no difference if the equitable cause clearly outweighed the legal cause so that the basic issue of the case taken as a whole is equitable. **As long as any legal cause is involved the jury rights it creates control.**" 369 U.S. 469, 473 n.8 (1962) (emphasis added) (quoting *Thermo-Stitch, Inc. v. Chemi-Cord Processing Corp.*, 294 F.2d 486, 491 (5th Cir. 1961)). While the Defendants may not like it, *Dairy Queen* is

1993). The "meticulous provision made in Rule 39 for jury waivers" has undisputedly not been followed here, and any alleged "informality" on Plaintiff's part is irrelevant. See *id.* Moreover, Plaintiff's decision to proceed to trial before this Court in the event of an adverse ruling - rather than to seek immediate appellate relief - does not bar Plaintiff from including the jury trial issue in a later appeal from a final order. See, e.g., *Nat'l Union Elec. Corp. v. Wilson*, 434 F.2d 986, 988 (6th Cir. 1970) (party's decision to proceed to trial - rather than to seek an interlocutory appeal or writ of mandamus - did not preclude that party from seeking review of order denying jury trial as part of an appeal taken from post-trial judgment).

still good and controlling law, and a "mixed relief" thesis parallels the "incidental" construct forcefully rejected by the Court. *Granfinanciera* itself also underscores the key distinction between "suits in which *legal* rights were to be ascertained and determined, in contradistinction to those where ***equitable rights alone*** were recognized, and equitable remedies were administered." 492 U.S. 33, 41 (1989) (bolded emphasis added) (quoting *Parsons v. Bedford*, 3 Pet. 433, 447 (1830)). Here, "legal" features not only are present but predominate the action, destroying any "mixed relief" theory.

First, Credit Suisse does not contest that claims for negligence and breach of implied contract are historically "legal" claims. Instead, Credit Suisse desperately tries to recast Plaintiff's whole case by asserting that these two claims "exactly track" or are "duplicative" of the breach of fiduciary duty claim. (See Def. Br. at 11-12.) This is a mistake; the three counterclaims are not coextensive.⁴ For instance, the trier-of-fact could conclude that although Credit Suisse and the Oakwood Entities enjoyed an intimate relationship, it was not enough to create fiduciary duties. Such a finding would not preclude the existence of an implied advisory contract, however. Likewise, Credit Suisse always

⁴ The Defendants' analysis is also question-begging in the extreme: Why should everything collapse into the fiduciary duty claim? Assuming *arguendo* that there is some "duplicative" aspect to the claims, why should they not collapse into the negligence claim? In fact, since that claim is unquestionably "legal" and because the law favors preservation of constitutional rights, the latter result is preferable, which undermines the Defendants' position.

owed the Oakwood Entities a duty of reasonable care vis-à-vis its "services," the breach of which duty gives rise to damages even in the absence of any fiduciary relationship. See, e.g., *Balaber-Strauss v. N.Y. Tel. (In re Coin Phones, Inc.)*, 203 B.R. 184, 200-01 (Bankr. S.D.N.Y. 1996). Mere factual overlap between the three claims is similarly not dispositive since a single act of malfeasance can often violate several distinct legal duties. As such, Credit Suisse's overt attempt to avoid the fact that two-thirds of Plaintiff's pre-August 19, 2002 counterclaims are "legal" in nature falls flat; the continuing existence of those separate claims creates a jury trial right.

Second, the Defendants simply misunderstand the remedy analysis. Plaintiff does not seek "equitable" relief - such as an accounting, constructive trust, or injunction - but rather an award of fungible money damages. Such an award is not contingent on the "tracing" or other identification of particular property in the Defendants' possession; the Trust does not care from where Credit Suisse gets the funds to pay an adverse judgment. Thus, as Judge Posner cogently explained in *Williams Electronics Games, Inc. v. Garrity* - a case the Defendants simply ignore - Plaintiff's requested relief is "a legal remedy for a legal wrong, not [] an equitable remedy for a legal or an equitable wrong." 366 F.3d 569, 578 (7th Cir. 2004); see also, e.g., *Dastgheib v. Genentech, Inc.*, 457 F. Supp. 2d 536, 543-46 (E.D. Pa. 2006) (detailing why a request for return of unjust profits in the form of fungible dollars is considered a "legal" remedy carrying a right to a jury).

Critically, this conclusion would obtain even *if* all Plaintiff sought was the return of Credit Suisse's fees, but that is not the extent of the damages here - Plaintiff also seeks damages for the direct harm to the Debtors caused by Credit Suisse's malfeasance. There can be no real dispute that such compensatory damages are wholly "legal" in nature.

Third, the principal case on which the Defendants rely, *Cantor v. Perelman*, No. 97-586-KAJ, 2006 WL 318666 (D. Del. Feb. 10, 2006), should be distinguished from the case at bar. Just two claims were at issue in *Cantor* - breach of fiduciary duty and aiding and abetting the same - both of which are historically "equitable." Here, in contrast, there are additional causes of action that have always been "legal" in nature. Indeed, Judge Jordan expressly noted how the analysis in *Cantor* would have been different "if at least one of Plaintiffs' claims [had been] legal rather than equitable." *Id.* at *7 n.7. Additionally, the plaintiffs in *Cantor* clearly were focused on the recovery of specific sums received by three directors in connection with certain note transactions, *see id.* at *1, which gave their requested remedy a distinctly equitable flavor. *See id.* at *9. Here, in contrast, the thrust of Plaintiff's case is on remedying the harm done to the Debtors, rather than on merely recovering illicit gains. Thus, unlike *Cantor*, the core nature of this case is about getting "legal" relief on account of "legal" causes of action.

Because the Defendants cannot unilaterally transmute the nature of Plaintiff's case, their attempt to avoid the

"legal" aspects of Plaintiff's counterclaims and remedies must fail. As *Dairy Queen* makes clear, even "incidental" "legal" features control the outcome and require a jury trial here.

B. Because Several Claims And Issues Are Logically Distinct From The Allowance Vel Non Of CSS's Proofs Of Claim, The Defendants' Implied Waiver Theory Collapses Completely.

Credit Suisse's second argument is that the Trust's choice to combine claim objections with affirmative litigation before this Court somehow made the entire adversary proceeding part of the claims-allowance process or otherwise triggered a categorical submission to "the equitable jurisdiction of this Court." (See Def. Br. at 14-21.) This radical theory ignores the analytic framework prescribed by the Third Circuit and runs directly counter to the Supreme Court's jurisprudence.

The Defendants' core proposal - that any adversary proceeding filed by the representative of a debtor's estate in a bankruptcy court, rather than in some alternative forum, categorically eliminates **any and all** of the estate's jury trial rights forever - flies smack in the face of the Supreme Court's clear instruction that "legal claims are not magically converted into equitable issues by their presentation to a court of equity." *Ross v. Bernhard*, 396 U.S. 531, 538 (1970). Several courts in this circuit have rejected Credit Suisse's rigid forum-based rule, using Ross's guidance as a foothold.⁵

⁵ See *NDEP Corp. v. Handl-It, Inc. (In re NDEP Corp.)*, 203 B.R. 905, 912-13 (D. Del. 1996) (rejecting notion that an action in bankruptcy court must waive jury rights because "courts should not be eager to embrace an implied waiver of constitutional rights where is an affirmative and timely assertion of those

The Defendants' extreme theory was also considered and flatly rejected in *Hays v. Equitex, Inc. (In re RDM Sports Group)*, 260 B.R. 915 (Bankr. N.D. Ga. 2001). There, the trustee filed an adversary proceeding against the debtors' former law firm. In response, the law firm argued "that the Trustee, by filing this action in the bankruptcy court, as opposed to the district court or the state court, waived his right to a jury trial." See *id.* at 920-21. The firm's point mirrored that now made by Credit Suisse: Since the trustee brought "his complaint in a court that lacks the authority to conduct a jury trial," he "submitted to equity" and waived any jury right. See *id.* at 921-22. The court was not convinced; it concluded that the relevant Supreme Court cases focus on "the claims process and/or the restructuring of the debtor-creditor relationship," and thus "the Trustee's commencement of [an] action in bankruptcy court does not constitute an automatic waiver of his right to a trial by jury," even if the trustee's claims may be brought elsewhere. See *id.* at 924-25.

rights" and because "[t]he constitutional right to a trial by jury is not so ephemeral" so as to turn on the forum); *In re Franklin Towne Lodge Ltd. P'ship*, No. 91-2702, 1992 U.S. Dist. LEXIS 18817, at *9 (E.D. Pa. Nov. 25, 1992) ("By asserting its private rights, [the debtor] has not implicitly waived its jury right by commencing an adversary proceeding in the bankruptcy court, as legal claims cannot be magically converted into equitable claims by their presentation to a court of equity."); *In re Globe Parcel Serv., Inc.*, 75 B.R. 381, 383 (E.D. Pa. 1987) ("The type of forum chosen as the arena for litigation is not dispositive on the question of whether a right to a jury trial exists. The mere fact that a plaintiff raises his legal claims before a court of equity in the context of an equitable proceeding does not somehow convert claims that are otherwise legal - triable before a court of law - into equitable ones.").

The Second Circuit likewise held that a *per se* rule of waiver akin to that advanced by Credit Suisse is supported by "neither precedent nor logic" and "[f]or a waiver to occur, the dispute must be part of the claims-allowance process or affect the hierarchical reordering of creditors' claims."

Germain v. Conn. Nat'l Bank, 988 F.2d 1323, 1330 (2d Cir. 1993). This rule coheres with the Third Circuit's belief that a waiver theory based solely on a bankruptcy forum "raises as many questions as it answers," and the mere "fact that the debtor may have voluntarily submitted itself to the bankruptcy court's equitable jurisdiction does not complete the analysis. **A court must also ask whether the resolution of the particular dispute at issue is necessarily part of the process of the disallowance and allowance of claims.**" See *Billing v. Ravin, Greenberg & Zackin, P.A.*, 22 F.3d 1242, 1251-52, n.14 (3d Cir. 1994) (emphasis added), cert. denied, 513 U.S. 999 (1994); accord *In re NDEP Corp.*, 203 B.R. at 912 (crystallizing the same question). Thus, since Credit Suisse's categorical rule creates exactly the "ephemeral" right against which *In re NDEP Corp.* cautions, see 203 B.R. at 913, the focus must return to where it began in the Opening Brief: Are the three claims for breach of fiduciary duty, negligence, and breach of implied contract **necessarily** part of the claims-allowance process?⁶

⁶ Credit Suisse incorrectly asserts that "[t]he sole issue is thus whether **this action** implicates the claims allowance process." (Def. Br. at 14 (emphasis added).) "The right to jury trial attaches to specific issues, rather than to an entire action." 8 MOORE'S FEDERAL PRACTICE § 39.12[2] (Matthew Bender 3d ed. rev.

The Defendants blithely contend that "allowance or disallowance of CSS's Proof of Claim cannot be resolved without reference to the conduct and claims underlying the counterclaims" (Def. Br. at 15), but they fail ever to explain **why** this is so. In fact, as Plaintiff detailed on pages 18-19 of the Opening Brief, this is decidedly **not** the case; the three counterclaims for which Plaintiff requests a jury trial are based on a completely different set of "services," over a different period of time, involving several Credit Suisse entities other than CSS. A jury's resolution of the issues attendant to those counterclaims will not affect whether CSS has an allowable claim against the Debtors' estates. Although considerations of efficiency justify a single trial - a truth the Defendants never contest - this adversary proceeding could theoretically be bifurcated around the August 19 Contract. Consequently, all the counterclaims unrelated to that contract are not **necessarily** connected to the claims-allowance process.

In the Opening Brief, Plaintiff explained at length why the *Germain* and *Mirant* decisions both support this mode of analysis. The Defendants' Brief briefly discusses *Germain*⁷

2007). Clearly "this action" bears on the claims-allowance process, as did the "action" in *Mirant Corp. v. Southern Co.*, 337 B.R. 107 (N.D. Tex. 2006). But that is not the relevant issue; unless **every one** of Plaintiff's counterclaims **also** "implicates the claims allowance process," the posture of this adversary proceeding does not defeat Plaintiff's rights to a jury trial.

⁷ Beyond merely repeating *Germain*'s instructive holding, the Defendants suggest in their footnote 10 that the Second Circuit's equitable subordination analysis distinguishes the case. That is incorrect; the court merely noted that the trustee could not use

but essentially ignores *Mirant*.⁸ This is unfortunate, because *Mirant* provides useful guidance about the proper result here.

Similarly helpful is *In re Crown Vantage, Inc.*, No. 02-03836, 2002 U.S. Dist. LEXIS 26109 (N.D. Cal. Dec. 16, 2002). There, the debtor filed an adversary proceeding against a creditor ("Fort James") that had filed proofs of claim. The debtor's complaint included claims for breach of fiduciary duty and negligence based on prepetition misconduct. Fort James moved to strike the debtor's demand for a jury trial, asserting - just like Credit Suisse in this case - that the adversary proceeding was "inextricably intertwined" with its proofs of claim and that the debtor waived its jury rights via "the submission to the equitable jurisdiction of the [bankruptcy] court." See *id.* at *9-11. The court rejected both arguments. As to the first, the court concluded that:

Even if Fort James's proof of claim and Crown's claims against Fort James arose from the same agreement or are otherwise related, this does not deprive Crown of the right to a jury trial. When, as here, the resolution of a party's legal claims

the results of a jury trial as a basis for equitable subordination. See 988 F.2d at 1332. A similar framework could be used here; e.g., the Court might rule that if Plaintiff tries certain counterclaims to a jury, it may not subsequently use that jury's findings as a basis to equitably subordinate CSS's claim.

⁸ The only reference to *Mirant* is in a footnote on page 16, where the Defendants attempt to distinguish the case on the grounds that it involved a creditor's rights, instead of the estate's. It is easy to understand why the Defendants hope to avoid *Mirant* - it is nearly a mirror image of the instant case. Yet Credit Suisse's suggestion that a role juxtaposition alters the result is undercut by the Third Circuit's decision in *Billing*, which explains that the estate's rights to a jury essentially track a creditor's, and turn on the same questions. See 22 F.3d at 1253.

arising from a bankruptcy proceeding will have but a negligible impact on the claims-allowance process, the right to a jury trial is preserved.

Id. at *10. This conclusion only underscores how **every one** of Plaintiff's counterclaims must be a fundamental part of the claims-allowance process for a complete "waiver"; that some may have an incidental or negligible impact is an insufficient reason to obliterate Plaintiff's rights. The *Crown Vantage* court quickly dismissed Fort James's broad "waiver" argument, concluding - as in *Germain*, *Billing*, *Mirant*, and *NDEP* - that the focus is not on the bankruptcy forum itself, but rather on the logical connection between specific causes of action and inherent bankruptcy court functions. See *id.* at *11-13.

In sum, this Court should reject the Defendants' broad, categorical "waiver" theory as being deeply out of step with the Supreme Court's *Ross* opinion and subsequent case law. Any regime under which a party's choice of forum is conclusive renders the Seventh Amendment a transient and ephemeral right. The bulk of the case law - operating under basic common sense and due respect for the Constitution - correctly holds that a more substantive inquiry should be used. In the context of bankruptcy cases, that deeper inquiry looks to the claims-allowance process and reviews each individual claim to see if it necessarily affects that process. Here, Plaintiff will try several counterclaims that have no bearing on the allowance of CSS's proofs of claim, and that logical disconnect preserves Plaintiff's Seventh Amendment rights to have a jury try all those claims. Credit Suisse fails to persuade otherwise.

C. A Pre-Petition Contract Waiving Certain Debtors' Jury Rights As Against One Defendant, And Only With Respect To That Specific Contract, Has No Effect On This Proceeding.

In a final gambit to avoid trying any part of this case before a jury, the Defendants point to a contractual jury waiver clause in the documentation for the "warehouse" credit facility used by the Oakwood Entities. There are three deep flaws with the Defendants' ploy, however, any one of which proves fatal. Before detailing those problems, it is useful to recall the Supreme Court's timeless recognition that, "as the right of jury trial is fundamental, courts indulge every reasonable presumption against waiver." *Aetna Ins. Co. v. Kennedy*, 301 U.S. 389, 393 (1937).⁹ Following the Court's maxim, courts strictly construe purported contractual jury waivers against the party seeking to enforce such a waiver.¹⁰

⁹ See also, e.g., *Jennings v. McCormick*, 154 F.3d 542, 545 (5th Cir. 1998) ("The right to jury trial is too important . . . for courts to find a knowing and voluntary relinquishment of the right in a doubtful situation."); *Reboy v. Cozzi Iron & Metal, Inc.*, 9 F.3d 1303, 1306 (7th Cir. 1993) ("The right to a jury trial is important and this Court will not find a waiver without clear, unequivocal evidence that the party intended to waive its right."); *Nat'l Acceptance Co. v. Myca Prods., Inc.*, 381 F. Supp. 269, 270 (W.D. Pa. 1974) ("Courts will narrowly construe any waiver of [the jury trial] right and will indulge in every reasonable presumption against waiver.").

¹⁰ See, e.g., *Med. Air Tech. Corp. v. Marwan Inv., Inc.*, 303 F.3d 11, 18 (1st Cir. 2002) ("There is a presumption against denying a jury trial based on waiver, and waivers must be strictly construed."); *Urban Outfitters, Inc. v. 166 Enter. Corp.*, 136 F. Supp. 2d 273, 275 (S.D.N.Y. 2001) ("Courts are to strictly construe jury waiver clauses, as the right to a jury trial is fundamental and protected by the Seventh Amendment."); *Capital Assocs. Int'l, Inc. v. Banc One Leasing Corp. (In re Capital Assocs. Int'l, Inc.)*, No. 03-2017, 2003 Bankr. LEXIS 931, at *6 (Bankr. N.D. Tex. Aug. 6, 2003) ("[C]ourts construe purported

Hence, any uncertainty about the true scope and effect of the purported jury waiver should be resolved in the Trust's favor.

The first problem with the Defendants' contractual waiver theory stems from the identity of the signatories. As the Defendants coyly admit, the purported waivers only involve two of the Debtors and "a Defendant" entity - specifically, "Credit Suisse First Boston, New York Branch, as Agent" for the warehouse facility ("NY Branch"). (See Def. Br. at 22-23; Murphy Decl. [Docket No. 202] Ex. "D" at signature page, Ex. "E" at signature page.) The Trust succeeded to the rights of nearly twenty "Debtor" entities, however, and NY Branch is not the sole, or even the primary, defendant in this proceeding. Indeed, the Defendants' own brief attempts to portray this dispute as one that only involves a *totally different Credit Suisse entity*.¹¹ (See Def. Br. at 7 (arguing that all the "remaining claims - on which the Trust now seeks a jury trial - are *claims arising out of the relationship between Oakwood and CSS prior to August [19], 2002*" (emphasis added)).)

contractual jury waiver provisions strictly against waiver, and will indulge every reasonable presumption against waiver.").

¹¹ The Defendants' efforts to apply NY Branch's waiver to CSS via osmosis directly conflict with their insistence in footnote 3 of the Defendants' Brief that the separateness of the Credit Suisse entities should be respected - a theme one of the key CSS actors stressed at his deposition. (See Declaration of Whitman L. Holt ("Holt Decl."), Ex. "A" at 70:18-71:4, 172:1-19, 389:9-391:12.) Although Plaintiff believes the Credit Suisse entities functioned as one unit or were otherwise "alter egos," this issue need not be resolved today because that fact still would not justify including a nonsignatory within the scope of a contractual jury waiver. See, e.g., *Nisselson v. Empyrean Inv. Fund, L.P. (In re MarketXT Holdings Corp.)*, 336 B.R. 39, 63 (Bankr. S.D.N.Y. 2006).

This is a weighty problem in both directions. After all, it is fundamental that, "[g]enerally, a jury waiver provision in a contract or lease affects only the rights of the parties to that contract or lease." *Hulsey v. West*, 966 F.2d 579, 581 (10th Cir. 1992) (guarantor of corporate loan was not bound by jury waiver in loan agreement that he did not execute in his personal capacity).¹² Thus, the Defendants, including CSS, cannot all claim shelter in a waiver signed only by NY Branch. Nor can that waiver diminish the rights of Debtors that did not sign it - rights that now belong to the Trust. Simply put, the waiver applies to the wrong parties.

The second major problem relates to the scope of the waiver itself. At its broadest, the waiver pertains only to an action "relating directly or indirectly to" the agreements establishing the "warehouse" facility. But this litigation is not about any breach of those contracts, or about whether NY Branch adequately performed thereunder. Rather, it is about

¹² See also, e.g., *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) ("It goes without saying that a contract cannot bind a nonparty."); *Med. Air Tech. Corp.*, 303 F.3d at 18 ("In general, a contractual waiver binds only the parties who sign the contract."); *Paracor Fin., Inc. v. GE Capital Corp.*, 96 F.3d 1151, 1166 n.21 (9th Cir. 1996) (explaining that because "courts generally construe jury waivers narrowly," the court is "even more hesitant to extend the protections of [a] jury waiver clause to a nonsignatory"). The Third Circuit's recent decision in *Tracinda Corp. v. DaimlerChrysler AG*, No. 05-2363, 2007 U.S. App. LEXIS 22221 (3d Cir. Sept. 18, 2007), is not to the contrary. In *Tracinda*, the court held that a contractual jury waiver signed by a corporation encompassed nonsignatory directors and officers of that corporation, in their capacity as corporate agents. See *id.* at *31. This rule is inapplicable here since there has not been (nor could there be) any allegation, or evidence, that CSS was somehow acting as a corporate agent on the behalf of NY Branch.

whether Credit Suisse breached far broader duties, not arising from any contract, by partaking in myriad illicit transactions with the Oakwood Entities. Indeed, while NY Branch's provision of the "warehouse" is undoubtedly a *relevant fact*, it is hardly the lynchpin of Plaintiff's counterclaims; the claims for negligence, breach of fiduciary duty, and breach of implied contract would be equally viable even if an entirely different lender had provided Oakwood's "warehouse" facility.

Once again, the Defendants adopt a far too myopic view of this case in an effort to limit Plaintiff's rights. Because this action is about much more than the "warehouse" facility and related agreements, it falls outside the scope of the purported waiver. Other courts have reached precisely the same conclusion in similar circumstances.¹³ Simply put, the purported contractual waiver is far too limited to apply here.

The final problem with the Defendants' contractual waiver theory is that the Defendants have failed to meet their burden of proving that the waiver is enforceable in the first instance. *First Union National Bank v. United States*, 164 F.

¹³ See, e.g., *Nichols Motorcycle Supply Inc. v. Dunlop Tire Corp.*, 913 F. Supp. 1088, 1146-47 (N.D. Ill. 1995) (broad jury waiver in "Distributor Agreement" did not encompass any "claims that do not directly arise or have their basis in the Distributor Agreement"); *Nat'l Acceptance Co. v. Myca Prods., Inc.*, 381 F. Supp. 269, 269-70 (W.D. Pa. 1974) (jury waiver in loan agreement purporting to affect "any action" between the parties did not apply to claim alleging breach of a separate oral agreement); see also *OHC Liquidation Trust v. Credit Suisse First Boston (In re Oakwood Homes Corp.)*, 340 B.R. 510, 519-20 (Bankr. D. Del. 2006) (indemnification provision of August 19 Contract does not apply to actions for breach of independent, non-contractual duties).

Supp. 2d 660 (E.D. Pa. 2001), highlights the issue. There, a bank that had loaned millions of dollars to a corporation attempted to enforce a contractual jury waiver contained in the loan agreement as against a nonsignatory party. The court began its analysis by noting how "Courts do not uphold jury trial waivers lightly and the burden of proving that a waiver was done both knowingly and intelligently falls upon the party seeking enforcement of a waiver of a jury trial clause." *Id.* at 663. Among the evidence the waiver proponent **must** proffer is some "evidence that there was not a gross disparity in bargaining power between" the parties. See *id.* at 665. This is particularly important when the signatory corporation is in poor "financial straits at the time the documents were executed, [since] it is highly likely that there was a severe disparity in bargaining power" in such circumstances. See *id.*

Here, the Defendants have not proffered a shred of evidence to meet their burden of showing that there was no gross disparity in power between Oakwood and NY Branch. This is critically important, because there **is** unrebutted evidence in the record that the Oakwood Entities were insolvent at the time and had no practical choice but to sign whatever form of documents Credit Suisse presented.¹⁴ As such, any purported

¹⁴ See, e.g., Holt Decl. Ex. "B" at 50:6-52:16 (key Oakwood officer explaining that the "warehouse" deal was "the only game in town" and "had to get done" no matter the terms). Both of the Trust's experts have concluded and will testify that the Debtors were insolvent during this period. While expert discovery does not close until next week, Credit Suisse can offer no "rebuttal" experts to counter the insolvency (or any other) conclusion.

contractual jury waiver is presumptively invalid, and the Defendants have not met their burden of proving otherwise.

The purported contractual waiver involves the wrong parties, is too narrow, and is not enforceable in any event. Given the skeptical eye with which courts read such waivers, this flimsy one cannot eviscerate Plaintiff's basic rights.

D. To The Extent That The Court Considers This To Be A Close Question, It Should Err On The Side Of Preserving And Protecting Plaintiff's Core Constitutional Rights.

All three of Credit Suisse's strained arguments against a jury ultimately fail for the reasons outlined above. Nevertheless, if the Court still has any lingering doubt about whether the Trust retains its Seventh Amendment rights, this Court properly should err *in favor of* protecting Plaintiff's fundamental rights. As powerfully explained by one court:

the right to a trial by jury is one of the most precious of the rights guaranteed by the Constitution, and should be one of the most jealously guarded. In view of this, if the Court is to err in its holding, it chooses to err in favor of granting a right to trial by jury, as opposed to denying such an important right.

EEOC v. Blue Star Foods, Inc., No. 78-5-W, 1980 U.S. Dist.

LEXIS 11131, at *11 (S.D. Iowa Mar. 7, 1980).¹⁵ Because Credit

¹⁵ See also, e.g., *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 510 (1959) ("Since the right to jury trial is a constitutional one, however, while no similar requirement protects trials by the court, [judicial] discretion is very narrowly limited and must, wherever possible, be exercised to preserve jury trial." (footnote omitted)); *Turner v. Johnson & Johnson*, 809 F.2d 90, 99 (1st Cir. 1986) ("[I]f we must err, we choose to do so on the side of preserving plaintiffs' right to a jury trial."); *United States v. McAlister*, 630 F.2d 772, 774 (10th Cir. 1980) (noting how if a decision will "require too many jury trials, we properly

Suisse has not established its position beyond the shadow of a doubt, any residual uncertainty must favor Plaintiff's rights.

III. CONCLUSION

For the reasons and based on the authorities presented above and in the Opening Brief, Plaintiff requests that this Court affirm Plaintiff's rights to a jury trial.

Respectfully submitted,

Dated: October 17, 2007
Wilmington, Delaware

/s/Marla Rosoff Eskin
MARLA ROSOFF ESKIN (No. 2989)
KATHLEEN CAMPBELL DAVIS (No. 4229)
CAMPBELL & LEVINE, LLC
800 N. King Street, Suite 300
Wilmington, DE 19801
(302) 426-1900

-and-

TONY CASTAÑARES (CA SBN 47564)
STEPHAN M. RAY (CA SBN 89853)
WHITMAN L. HOLT (CA SBN 238198)
STUTMAN, TREISTER & GLATT, P.C.
1901 Avenue of the Stars, 12th Fl.
Los Angeles, CA 90067
(310) 228-5600

Special Counsel for the
OHC Liquidation Trust

err on the side of protecting a constitutional right"); *Educ. Testing Servs. v. Katzman*, 670 F. Supp. 1237, 1243 (D.N.J. 1987) (Barry, J.) (concluding that if court erred by denying motion to strike, it "erred on the side of protecting an important constitutional right, fundamental to the fair administration of justice"); *Prudential Oil Corp. v. Phillips Petrol. Co.*, 392 F. Supp. 1018, 1022 (S.D.N.Y. 1975) ("[T]he inescapable teaching of recent Supreme Court decisions is that there is a clear federal policy in light of the Seventh Amendment favoring jury trials and that, in doubtful cases, that policy should be favored.").

Exhibit D

EXPERT WITNESS REPORT
OF
DR. MICHAEL TENNENBAUM
FLAVELL, TENNENBAUM & EDWARDS

OHC LIQUIDATION TRUST
V.
CREDIT SUISSE FIRST BOSTON, ET AL.

IN RE: OAKWOOD HOMES CORPORATION, ET AL.

EXPERT WITNESS REPORT OF DR. MICHAEL TENNENBAUM

I have been requested by the OHC Liquidation Trust and its counsel, the firm of Stutman, Treister & Glatt, to analyze and opine on a number of issues regarding Oakwood Homes Corporation, as more fully set forth below.

I am a partner in the valuation and financial consulting firm known as Flavell, Tennenbaum & Edwards, and have been a practicing consulting economist for more than thirty (30) years. My educational background includes a B.A. in Economics and Mathematics, an M.A. in Economics and a Ph.D. in Economics, all earned at the University of California, Los Angeles. From 1969 to 1986 I was also a Professor of Economics at California State University, Long Beach. During my career, I have conducted valuation analyses on dozens of companies for transaction as well as litigation purposes, and have also valued large complex real property assets. I have prepared reorganization value studies, reorganization plan feasibility studies and solvency analyses in connection with many major bankruptcy reorganizations. I have rendered expert valuation testimony in many Federal Bankruptcy courts, Federal District Court, Federal Tax Court, Chancery Court in Delaware, and State courts throughout California, and in Michigan and Washington. During my teaching career I have taught courses in corporate valuation, finance, real property valuation and economics. A full and complete copy of my curriculum vitae is included herewith.

In addition to the analyses summarized in this report, I have been requested to provide the following information.

1. Michael Tennenbaum, Ph.D. - - Publications and Testimony
 - a. Publications within the last fifteen years: "The Income Approach to Business Valuation," Trial News, Washington State Lawyers Assoc., July/August, 1994
 - b. Cases in which expert testimony was rendered at trial and/or by deposition within the last five years:

2002:

In re. Edwards Theatres Chapter 11 – Orange County	deposition, court testimony
Fair v. Caruso Los Angeles County Superior Court	deposition, arbitration testimony
Resort at Summerlin v. Marsh, USA Federal District Court, Las Vegas	deposition

2003:

Furgatch v. San Diego Unified Port District (Case No. GIC 775242/784923)	deposition, court testimony
Sunrise Buena Park v. Old Navy Orange County, CA (Superior Court No. 02 CC05035)	deposition, court testimony
In re. Hechinger Investment Company of Delaware, Inc. Delaware Bankruptcy Court	deposition

2004:

In re. Olympic Pipeline Company, Chapter 11, Seattle Washington	deposition, court testimony
--	-----------------------------

2005:

Brown v. Gill Federal Bankruptcy Court, Los Angeles	deposition
Los Angeles Export Terminal, Inc. v. Thyssenkrupp Robins Inc., et al. Los Angeles Superior Court Case No. BC 284285	deposition

2006:

Los Angeles Export Terminal, Inc. v. Thyssenkrupp Robins Inc., et al. Los Angeles Superior Court Case No. BC 284285	court testimony
--	-----------------

2. Hourly Rate Schedule for Flavell, Tennenbaum & Edwards:

R.H. Flavell, MAI	\$350
M. Tennenbaum, Ph.D.	\$395
D. Edwards, MAI	\$350
Professional Staff	(\$100 - \$200)
Michael Daniels	
Thomas Yoshioka	
Jason Tennenbaum	

Fees are computed based on the hourly rate schedule, and expenses consist of out of pocket expenditures.

My analyses in this matter included review of numerous documents, including filings with the court, deposition transcripts and exhibits, brokerage firm analyst reports, SEC filings, Oakwood Homes Corporation financial documents, and financial and economic texts and professional journal literature.

In particular, my review included deposition transcripts and exhibits of the depositions of:

Myles Standish
Doug Muir
James Xanthos
Fiachra O'Driscoll
Jared Felt
Thomas P. Irwin
Clarence W. Walker

Securities and Exchange Commission filings, consisting of various 10-K and 10-Q reports for Oakwood and comparable competitive companies were reviewed, as were reports from Hoovers, Morningstar and Ibbotson Associates.

The economic and financial texts which I reviewed include, but are not limited to, the following:

Ibbotson Associates, Stocks, Bonds, Bills and Inflation
B. Cornell, The Equity Risk Premium
B. Cornell, Corporate Valuation
A. Damodaran, Investment Valuation
A. Damodaran, Corporate Finance
A. Davidson, A. Sanders, L. Wolff, A. Ching, Securitization
L. Hayre, Guide to Mortgage Backed & Asset Backed Securities
J. Stowe, T. Robinson, J. Pinto & d. McLeavey, Equity Asset Valuation
T. Copeland, J. F. Weston & K. Shastri, Financial Theory & Corporate Policy
W. Goetzmann & R. Ibbotson, The Equity Risk Premium
J. Siegel, Stocks for the Long Run
E. Dimson, P. Marsh & M. Staunton, Triumph of the Optimists
T. Koller, M. Goedhart & d. Wessels, Valuation
UCLA Andersen School, Proceedings of the UCLA Conference on the Equity Premium & Stock Market Valuation

Professional economic and finance journal articles which I reviewed include, but are not limited to, the following:

R. Ibbotson & P. Chen, "Long Run Stock Returns," Financial Analysts Journal, Jan./Feb. 2003
J. Graham, "Proxies for the Corporate Marginal Tax Rate," Journal of Financial Economics, 1996
J. Siegel, "The Equity Premium: Stock and Bond Returns Since 1802," Financial Analysts Journal, 1992
J. R. Woolridge, "Do Stock Prices Reflect Fundamental Values?" Journal of Applied Corporate Finance, 1995
J. Siegel & R. Thaler "The Equity Premium Puzzle," Journal of Economic Perspectives, 1997
J. Siegel, "The Shrinking Equity Premium," UCLA Conference on the Equity Premium, 1999
R. Grabowski & D. King, "New Evidence on Size Effects and Rates of Return," Business Valuation Review, 1996
S. Kothari & J. Shanken, "In Defense of Beta," Journal of Applied Corporate Finance, 1995

- D. King, "Equity Risk Premium for Cost of Capital Studies," Business Valuation Review, 1994
F. Black, "Beta and Return," Journal of Portfolio Management, 1993
E. Fama & K. French, "The Cross Section of Expected Stock Returns," Journal of Finance, 199
P. Kaplan & J. Peterson, "Full Information Industry Betas," Financial Management, 1998

My analyses included review of internal Oakwood documents, Credit Suisse First Boston documents and Price Waterhouse Coopers documents comprising thousands of pages. In addition, reports by a variety of professionals were reviewed.

The categories of internal OHC documents include:

1. Financial data and Rationalization Plan documents
2. Restructuring Term Sheets
3. Presentation to Lotus
4. OHC Board of Director Meeting Minutes
5. Executive Reports to the Board of Directors
6. Cumulative Loss Data and Security Price Histories
7. Internal E-Mail Documents and Prospectus Documents
8. Internal REMIC Valuation Documents

The categories of Price Waterhouse Coopers documents reviewed include:

1. PWC financial reports
2. PWC audit work papers
3. Review documents re REMIC valuation

The categories of Credit Suisse First Boston Documents reviewed include:

1. Presentations to OHC Board of Directors
2. Financial OHC Discussion Materials
3. Securities Sales Points
4. Internal Discussion Materials
5. Restructuring Term Sheets
6. OAC Residual Analyses

7. Presentations to Lotus
8. Presentations to Risk Management
9. Power Point Presentations
10. Presentations to Berkshire Hathaway
11. CSFB Credit Department Documents
12. CSFB Equity Department Reports

I also reviewed various reports prepared by financial professionals, including reports by Bradford Cornell, Miller Buckfire and Andrew Davidson.

Additional documents reviewed include certain reported court cases:

1. In re. Radnor Holdings Corp.
2. E-Toys Inc. v. Goldman Sachs
3. In re. Greater Southeast Community Hospital Corp.
4. Trenwick America Litigation Trust v. Ernst & Young LLP
5. In re Oakwood Homes Corporation, Debtor; JP Morgan Chase Bank, Appellant; U.S. Court of Appeals for the Third Circuit (449 F. 3d 588; 2006 U.S. App. Lexis 14183)

The purpose of this report is to provide my professional opinion as to the financial condition of Oakwood Homes Corporation as of various dates of value described below, and to consider the impact of certain financial activities of the company in view of its financial condition.

In particular, the issues on which opinions are rendered below include:

1. The Enterprise Value (i.e., Asset Value) of Oakwood as of mid-2001, FYE September 2001 and FYE September 2002.
2. The solvency of Oakwood Homes Corp. as of September 2001 and September 2002.
3. The change in Asset Values and change in long term Liability Values for Oakwood between September 2001 and September 2002.
4. The Equity Value in Oakwood Homes, valued as a call option on Enterprise Value, as of September 2001 and September 2002.
5. The long term Debt and Guarantee values of Oakwood implied by the call option analysis as of September 2001 and September 2002.
6. The change in Equity Value and Debt Value implied by the call option analysis between September 2001 and September 2002.
7. The default probability and probability of a return to solvency for Oakwood implied by the call option analysis, as of September 2001 and September 2002.
8. Changes in the probability of default by Oakwood and the probability of Oakwood's return to solvency between September 2001 and September 2002.

9. The impact of continued securitization of loans, guarantee of loans and servicing of loans on Oakwood's solvency and default probability between September 2001 and September 2002.
10. Damages suffered by Oakwood's Enterprise as a result of the foregoing issues.

My opinions in this matter include:

1. The Enterprise Value of Oakwood Homes Corporation as of FYE 2001 (September 2001) was \$350 Million, in rounded terms.
2. The Enterprise Value of OHC as of September 2002 (FYE 2002) was \$300 Million, in rounded terms.
3. Oakwood Homes Corporation was insolvent as of September 2001 and remained insolvent as of September 2002. As of September 2001, the value of OHC's Assets was \$120 Million less than the value of its Debt and Guarantees, and as of September 2002 the value of OHC's Assets was \$210 Million less than the value of its Debt and Guarantees.
4. OHC's Enterprise Value (Asset Value) fell by approximately \$50 Million between September 2001 and September 2002, while its long term liabilities increased by approximately \$40 Million.
5. Not only was OHC insolvent as of September 2001 and September 2002, but the likelihood of a return to solvency within a reasonable time frame (e.g., the expected duration of OHC's debt) was remote.
6. Economic theory predicts that in the presence of uncertainty as to future asset values, investors may be willing to pay for the equity of insolvent firms, since such equity represents a call option on future firm value. Despite its insolvency, analysis of OHC's Equity Value under such a Call option model yields an Equity Value as of September 2001 of \$25.8 Million and an Equity Value of \$1.2 Million as of September 2002.
7. The implied long term Debt and Guarantee values resulting from the call option analysis are \$324.2 Million as of September, 2001, and \$298.8 Million as of September, 2002.

8. The analysis of distressed and/or insolvent firm equity as a call option on Enterprise Value implies a reduction in Equity Value of \$24.6 Million and a reduction of Debt and Guarantee Values of \$25.4 Million between September 2001 and September 2002. Thus, both debt and equity suffered as a result of continued operations of Oakwood.
9. Even utilizing the extremely aggressive cash flow projections of mid 2001 and late 2001, OHC was insolvent by September 2001 and faced a high and increasing probability of default. The likelihood of a return to solvency was remote by September 2001, and continued insolvency was virtually certain by September 2002.
10. Continued securitization and guaranteed B-2 issuance beyond the middle of 2001 resulted in dissipation of OHC's Enterprise Value, i.e., reduction in the value of corporate assets, as well as an increase in liabilities.

This report is a summary of my opinions and may not include every aspect of my opinions. Charts and graphic aids embodying the information and "bullet points" in this report may be prepared for illustrative purposes.

The data and analyses supporting my opinions are contained in the sections of the report which follows.

SUBJECT INDUSTRY

- Manufactured housing is a significant subsector of the housing industry. During the late 1990's and the early years of this century, manufactured housing accounted for approximately one-third of all housing starts in the U.S. Most manufactured homes are rarely moved once situated, and nearly two-thirds are placed on private property, as opposed to MH communities.
- Manufactured Housing is a cyclical industry. Manufactured homes are factory built, transported to a site and installed. Economies of scale and efficient factory construction result in lower prices than for stick built homes.
- The industry experienced rapid growth in the mid-1990's as financial lenders tapped the asset-backed securities market to monetize consumer loans. Entry of dozens of sub-prime lenders, attracted by interest margins of 300 bps or more, resulted in weakened credit standards, high loan to value ratios (up to 95%), and underpriced loans. This led eventually to the same kind of default issues and financial distress currently affecting the sub prime mortgage market.
- By 1999, manufacturing capacity and shipments outpaced consumer demand, repossessions increased substantially, collateral performance began to deteriorate, and some lenders began to exit the industry. Sales dropped from 372,000 homes in 1998 to 193,000 in 2001. Industry problems persisted for a number of years.
- MH Industry Shipment Cycles:
 - Shipments increased from 221,000 in 1980 to 295,000 in 1984
 - Then shipments fell to 171,000 by 1991
 - Shipments rose from 171,000 in 1991 to 372,000 in 1998
 - Shipments then fell to 193,000 in 2001

- Manufacturing Plants:
 - 1980-1991: number of plants fell to 25 from 300+
 - 1991-1999: plants increase to 175+
 - 1999-2001: plants fall to 100+
- MH Industry Retail Inventory:
 - 1980-1984: inventory increases from 56,000 to 82,000±
 - 1984-1990: inventory falls to 48,000±
 - 1990-1997: inventory increases to 88,000±
 - 1997-2001: inventory falls to 58,000±
- Industry-wide Repos as % of Inventory:
 - 1999: 18.9%
 - 2000: 34.9%
 - 2001: 40.1%
 - 2002: 36.8%
- Industry Downsizing, 1998/99 to late 2002:
 - Champion:
 - Shipments fall from 70,300 to 39,500
 - Retail Centers decrease from 303 to 117
 - Plants decrease from 68 to 39
 - Clayton:
 - Shipments fall from 28,300 to 20,400
 - Retail Centers decrease from 318 to 287
 - Plants rise from 18 to 20
 - Fleetwood:
 - Shipments fall from 66,200 to 30,400
 - Retail Centers decrease from 243 to 137
 - Plants fall from 38 to 27

- Oakwood:

Shipments fall from 33,800 to 22,300

Retail Centers decrease from 412 to 197

Plants decrease from 32 to 19

Unsold repossessed homes increase from 1,267 to 7,063

SUBJECT COMPANY

- Oakwood Homes was established in 1946 and headquartered in Greensboro, North Carolina. The Company was publicly held and one of the largest companies in the Mobile Home Industry, and one of the few fully integrated firms in the industry. OHC operated three inter-related business divisions:
 - a. Manufacturing
 - b. Retail
 - c. Consumer Finance
- Manufacturing Division produced manufactured and modular homes:
 - Manufactured Homes:
 - Single section: 14' and 16' wide, 40' to 80' long
 - Multi section: 24', 28' and 32' wide, 2 – 4 floor, 40' – 80' wide
 - Permanent residences, but can be transported to homesites
 - Modular Homes:
 - 950 sq. ft. – 3,365 sq. ft., similar to site built homes, single-story – 2 story
- OHC formerly operated 32 manufacturing plants in 12 states, primarily in the South and Midwest. Subsequently reduced to 19.
 - Average product costs were 70% materials, 15% direct labor and 15% overhead
 - Homes built for company owned retail centers based on quantity and model assortment needs. Homes built for independent dealers based on dealer orders and funding availability.
- Retail Division:
 - OHC had peak of 412 company owned sales centers in 1998/1999, subsequently reduced to 197 by 2002
 - More than half of 2002 sales revenues came from company owned sales centers
 - Gross margins on retail sales were substantially higher than wholesale sales, as sales through OHC owned centers earn manufacturing margin plus retail markup. In 2002,

gross margins on retail sales reached 30%, while gross margins on wholesale sales were 17%, but wholesale sales were converted to cash 30-45 days faster than retail.

- Consumer Finance Division:
 - Oakwood Acceptance Corp (OAC) financed vast majority of retail sales, and in turn OAC securitized these loans in ABS market through Real Estate Mortgage Investment Conduits (REMICs). OAC generated income from servicing the manufactured home loans which it securitized
 - Until 2002, OHC also operated an insurance subsidiary which generated revenues from sales to homebuyers of physical damage insurance, credit life insurance and homebuyer protection contracts
- Securitization:
 - OAC funded loan originations (for approximately 75% of retail sales and 38% of whole sale sales) by aggregating loans quarterly and placing them into REMIC sold to investors as asset backed security
 - ABS sold in tranches, most of which were investment grade. Non-investment grade tranches ("B" pieces) were subordinate to investment grade tranches (mostly AAA rated). B pieces were generally retained by Oakwood and either included in future securitizations or sold whole. Retained REMIC interests were valued by OHC based on net credit loss, discount rate and prepayment assumptions.
 - As a credit enhancement, the company guaranteed payment of principal and interest on some B pieces sold to investors, recording a liability equal to the fair value of the guarantee. By FY 2002, the face amount of such guarantees reached \$274 Million, with an estimated fair value of approximately \$144 Million.
 - OAC retained the right to service all of its securitized loans in exchange for a servicing fee of approximately 1% of the principal balance of the serviced loans. The service fee was subordinate to all payments to REMIC bondholders.

- Delinquency, Repossession & Assumption:
 - Lenders to mobile home purchasers are, in effect, sub-prime lenders. Mobile home buyers have tended to be lower income consumers who could not afford or qualify for mortgages to purchase “stick built” homes (at least until recently). MH loans had (since the mid 1990’s) lower down payments (LTVs at 90% to 95%) and much higher interest rates (in the 9% to 18% range). As a result, MH loans had high and hard to predict default rates. These characteristics are similar to the recently imploding sub-prime mortgage/ABS market, with similar market results.
 - Repossession of homes from defaulting borrowers resulted in some payments of principal and interest made by OAC to the REMIC, refurbishing costs, sale of the home to a new buyer (often for less than the remaining loan balance, as mobile homes often depreciated in value), payoff of original loan balance to the REMIC trust, and inclusion of the new loan (often at 100% LTV) in a subsequent securitization.
 - Repos resulted in losses to the REMIC trust resulting from loss on resale, plus reimbursement to OAC of servicing advances and refurbishment. In addition:
 - Inclusion of repos in future securitizations affected credit ratings
 - Loan Purchase Facility contained limits on amount of repo loans
 - OHC may need to revalue its residual pieces
 - OHC guarantee payments may become more likely
 - Repos compete with new units in marketplace
 - OAC’s Loan Assumption Program (LAP) tried to minimize effects of repos, but used substantial amounts of capital, as some expenses (e.g. refurbishment) couldn’t be charged to REMICs and had to be charged to earnings.
 - Industry wide lax underwriting standards for loans in late 1990’s, matched by OAC, resulted in high and rising net losses from repos. Oakwood’s repos reached 13,400± by FY 2002, compared to 5,475 in FY 1998. Net losses from repos as a percentage of average principal loan amounts reach 4.6% by FY 2002, compared to 1.96% in FY 2000. Such figures are reminiscent of recent sub-prime mortgage data.

- Competition:

- Retail market was competitive, with top five companies representing about 25% of the market by 2002.
- Manufacturing was relatively concentrated, with the top ten manufacturers capturing about 79% of the market by 2002. Of the top ten, seven were public:

Champion Enterprises

Fleetwood Enterprises

Oakwood Homes

Clayton Homes

Palm Harbor Homes

Skyline Corp.

Cavalier Homes

In addition, Cavco Industries, which operated in the southwestern and western U.S., was a subsidiary of Centex Corp.

- Financial History

- The financial history of OHC between 1995 and 2002 is depicted on the accompanying schedule
- Manufacturing, Wholesale and Retail revenues more than doubled between 1995 and 1999, to \$1.5 Billion. Between 1999 and 2002, Wholesale revenues fell 11%, while Retail revenue fell 50%. EBIT Margins for Manufacturing & Retail fell from 7% - 8% in 1995 -1998 to 1% in 1999, and became negative from 2000 – 2002.
- Consumer finance revenues peaked in 1997 at \$91.7 Million, falling to \$64.5 Million by 2002, a decrease of 30%. Financial Services EBIT peaked at \$73.7 Million in 1997 and by 2002 fell to \$21.4 Million. EBIT Margin fell from 78.5% in 1996 to 22.7% in 2002.
- Total OHC EBIT peaked at \$168.4 Million in 1998, and became negative for 2000 - 2002.
- Total OHC EBITDA peaked at \$192.5 Million in 1998, an 83% increase from 1995, and fell to \$8.5 Million by 2002, a 95% drop from 1998. Total EBITDA Margin ranged between 12% and 16% for 1995 – 1998, falling to 0.8% by 2002.

- The foregoing deterioration in revenues and earnings, together with impending increases in recognized B2 guarantee liabilities and loss of cash, resulted in severe financial distress and a late 2002 Chapter 11 filing.

Oakwood Homes
Historical Financial Data

	FYE September 30							
	1995	1996	1997	1998	1999	2000	2001	2002
Manufacturing & Retail Revenue								
Wholesale	\$ 196,900,000	\$ 158,900,000	\$ 94,330,000	\$ 264,400,000	\$ 459,600,000	\$ 420,800,000	\$ 331,600,000	\$ 410,700,000
Retail	\$ 644,000,000	\$ 703,200,000	\$ 659,400,000	\$ 1,140,000,000	\$ 1,037,000,000	\$ 769,000,000	\$ 653,600,000	\$ 516,800,000
Other	\$ 17,300,000	\$ 19,600,000	\$ 14,600,000	\$ 10,800,000	\$ 10,400,000	\$ 9,800,000	\$ 9,300,000	\$ 7,600,000
Total Manufacturing Revenue	\$ 758,200,000	\$ 881,700,000	\$ 667,300,000	\$ 1,415,200,000	\$ 1,506,900,000	\$ 1,199,600,000	\$ 1,014,400,000	\$ 934,100,000
% Growth		16.1%	9.7%	46.3%	6.7%	-20.5%	-15.5%	-7.3%
Manufacturing & Retail Expenses								
Cost of Sales	\$ 543,900,000	\$ 609,300,000	\$ 651,400,000	\$ 973,400,000	\$ 1,081,700,000	\$ 927,500,000	\$ 794,600,000	\$ 706,800,000
SG&A	\$ 195,300,000	\$ 211,800,000	\$ 236,600,000	\$ 341,400,000	\$ 411,300,000	\$ 335,100,000	\$ 270,800,000	\$ 281,500,000
Total Manufacturing & Retail EBIT	\$ 60,800,000	\$ 80,600,000	\$ 79,300,000	\$ 100,400,000	\$ 16,900,000	\$ (62,900,000)	\$ (91,000,000)	\$ (66,200,000)
Manufacturing & Retail EBIT Margin	6.7%	6.0%	6.2%	7.1%	1.1%	NM	NM	NM
Financial Services Revenue								
Consumer Finance	\$ 55,400,000	\$ 89,100,000	\$ 91,700,000	\$ 87,100,000	\$ 81,600,000	\$ 49,600,000	\$ 80,100,000	\$ 64,500,000
Insurance	\$ 2,800,000	\$ 3,200,000	\$ 11,100,000	\$ 34,000,000	\$ 49,600,000	\$ 56,400,000	\$ 38,900,000	\$ 29,800,000
Total Financial Services Revenue	\$ 62,000,000	\$ 92,300,000	\$ 102,800,000	\$ 121,100,000	\$ 131,200,000	\$ 106,000,000	\$ 119,000,000	\$ 94,400,000
% Growth		48.9%	11.3%	17.8%	-8.0%	-4.8%	12.3%	NM
Financial Services Expenses								
Consumer Finance	\$ 11,600,000	\$ 16,800,000	\$ 20,400,000	\$ 24,200,000	\$ 37,600,000	\$ 43,200,000	\$ 40,500,000	\$ 51,200,000
Insurance	\$ 1,200,000	\$ 2,000,000	\$ 8,700,000	\$ 27,600,000	\$ 35,500,000	\$ 32,300,000	\$ 16,500,000	\$ 13,500,000
Provision for Losses on Credit Sales	\$ 2,100,000	\$ 1,000,000	\$ -	\$ 1,300,000	\$ 3,300,000	\$ 3,000,000	\$ 8,400,000	\$ 3,200,000
Total Financial Services EBIT	\$ 47,100,000	\$ 72,500,000	\$ 73,700,000	\$ 68,000,000	\$ 32,100,000	\$ 27,500,000	\$ 54,000,000	\$ 29,400,000
Financial Services EBIT Margin	76.0%	78.5%	71.7%	56.2%	28.3%	25.3%	45.3%	22.7%
Total EBIT	\$ 87,900,000	\$ 153,100,000	\$ 153,000,000	\$ 168,400,000	\$ 49,000,000	\$ (35,300,000)	\$ (36,400,000)	\$ (14,800,000)
Total EBIT Margin	11.5%	13.7%	14.2%	11.0%	3.0%	-2.7%	-3.2%	-1.4%
Depreciation and Amortization	\$ 7,100,000	\$ 9,500,000	\$ 13,500,000	\$ 24,100,000	\$ 44,300,000	\$ 48,400,000	\$ 46,200,000	\$ 23,300,000
Total EBITDA	\$ 105,000,000	\$ 162,600,000	\$ 166,500,000	\$ 192,500,000	\$ 93,300,000	\$ 13,100,000	\$ 9,800,000	\$ 8,500,000
Total EBITDA Margin	12.4%	14.0%	15.0%	12.4%	5.8%	1.0%	0.9%	0.9%

FIVE YEAR PLAN PROJECTIONS

- The projections entitled “Oakwood Homes Five Year Plan” are based on projections developed in connection with the proposed Plan of Reorganization for OHC. The plan calls for volume and price growth consistent with difficult market conditions in the Manufactured Housing industry, and an effective exit from financial services.
- Summary characteristics of the Five Year Plan include:
 - Revenues increase from \$631 Million to \$829 Million annually
 - Net income increases from \$6.25 Million to \$36.2 Million
 - EBITDA rises from \$43.4 Million to \$82.4 Million
 - The number of sales centers remains constant at 99
 - Retail gross margin slowly increases from 21.1% to 22.1%
 - Securitizations fall by varying amounts, falling to \$49 Million and averaging less than \$100 Million
 - Cash flow from operations vary between a negative \$54.2 Million projected for FYE 2004 and \$72 Million projected for FYE 2005, then declining thereafter
 - Total projected cash flows increase from negligible amounts to \$25.5 Million per year
 - Annual capital expenditures increase from \$8 Million to \$16 Million
- The annual cash flow whose present value generates asset value is Free Cash Flow. In this case, OHC’s Free Cash Flow can be computed as follows:

Free Cash Flow = EBITDA – Taxes – Capital Expenditures – Increases in Working Capital – Reserve for Uncollectible Receivables + Sale of Loans – Increase in Retained Interests – Loans Originated.

- Projected annual Free Cash Flows increase to an interim amount of \$69 Million and a stabilized amount (such that sale of loans offsets loans originated and increase in retained interests) in the amount of \$58.8 Million per year by the end of the projection horizon.

- The foregoing projections form the basis for analysis of the reasonably anticipated Enterprise Value of Oakwood Homes, and its solvency, as of September 2002.

Oakwood Homes**5-Year Plan****Consolidated**

	Forecast FY 2003	Forecast FY 2004	Forecast FY 2005	Forecast FY 2006	Forecast FY 2007	Forecast FY 2008
Income Statement						
Revenues						
Net Sales:						
Retail	\$ 313,032	\$ 249,307	\$ 286,631	\$ 306,845	\$ 328,741	\$ 355,665
Wholesale	318,677	328,068	363,752	363,237	403,776	425,478
Net Sales	631,709	577,375	650,383	670,082	732,517	781,143
Financial Services Income						
Consumer Finance	(79,029)	44,518	42,826	39,814	37,057	37,163
Insurance	7,279	4,240	3,912	3,670	3,486	3,328
Financial Services Income	(71,750)	48,759	46,738	43,484	40,543	40,491
Other Income	12,094	5,131	5,894	6,284	6,723	7,254
Total Revenues	\$ 572,053	\$ 631,265	\$ 703,015	\$ 739,960	\$ 779,782	\$ 828,889
Operating Cost and Expenses						
Cost of Sales	513,891	436,289	486,129	514,144	542,285	574,526
Gross Profit Percent	18.7%	24.4%	25.3%	25.5%	26.0%	26.5%
General & Administrative Expenses	50,923	36,381	37,630	38,804	40,126	42,564
as % of total revenues	8.9%	5.8%	5.4%	5.2%	5.1%	5.1%
Service Expenses (including warranty)	35,627	26,293	29,657	31,444	33,344	35,525
as % of total revenues	6.2%	4.2%	4.2%	4.2%	4.3%	4.3%
Selling Expense	88,976	66,166	70,531	73,028	75,684	78,819
as % of total revenues	15.6%	10.5%	10.0%	9.9%	9.7%	9.5%
Consumer Finance Operating Expenses	44,686	36,573	33,084	30,175	27,854	26,107
Insurance Operating Expenses	4,158	456	456	456	456	456
Provisions for Losses on Credit Sales	6,177	822	864	916	970	1,031
Interest Expenses	36,998	14,538	12,979	10,482	9,196	9,565
Total Operating Cost and Expenses	\$ 781,138	\$ 617,530	\$ 671,330	\$ 699,449	\$ 729,915	\$ 768,572

Oakwood Homes
5-Year Plan
Consolidated

Income Statement	Forecast FY 2003	Forecast FY 2004	Forecast FY 2005	Forecast FY 2006	Forecast FY 2007	Forecast FY 2008
Restructuring and Impairment Costs:						
Restructuring Costs & Impairment Costs	38,538	0	0	0	0	0
Recapture of Servicing Liabilities	(87,790)	0	0	0	0	0
Impairment of REMIC Regular Interests	1,209	0	0	0	0	0
Impairment of Guarantee Liabilities	235,776	0	0	0	0	0
Professional Fees	20,148	1,650	0	0	0	0
Total Restructuring and Impairment Costs	\$ 207,881	\$ 1,650	\$ 0	\$ 0	\$ 0	\$ 0
Income Before Taxes	\$ (416,968)	\$ 12,085	\$ 31,685	\$ 40,511	\$ 49,868	\$ 60,217
Provisions for Income Taxes	0	5,826	12,674	16,204	19,947	24,127
Net Income	\$ (416,968)	\$ 6,259	\$ 19,011	\$ 24,307	\$ 29,921	\$ 36,090
EBITDA (2003 Rateless Normalized EBITDA)	43,457	48,065	59,689	64,518	71,959	82,395

Oakwood Homes
5-Year Plan
Consolidated

	Forecast FY 2003	Forecast FY 2004	Forecast FY 2005	Forecast FY 2006	Forecast FY 2007	Forecast FY 2008
Consolidated Cash Flow						
Operating Activities						
Operations						
Net Income/(Loss)	\$ (416,966)	\$ 8,258	\$ 19,011	\$ 24,307	\$ 29,921	\$ 36,190
Depreciation and Amortization	29,679	9,250	8,877	9,028	9,442	9,920
Non Cash Asset Impairment	262,198	0	0	0	0	0
(Gains)/Losses On Sale of Securities	53,637	0	0	0	0	0
(Increase)/Decrease in Retained Interest	(1,208)	(2,878)	(8,997)	(6,022)	(8,502)	(3,674)
Reserve for Uncollectable Receivables	6,567	(6,765)	(600)	(600)	(600)	(600)
Trade Accounts Receivable	568	(4,777)	(3,983)	(2,356)	(2,310)	(2,588)
Escrow Advances Receivable	610	(949)	(1,007)	(1,089)	(1,134)	(1,204)
Extensions Receivable	12,447	3,748	3,322	2,944	2,849	2,313
Income Taxes Receivable	20,422	0	0	0	0	0
Loans Servicing Assets	7,397	8,664	4,169	2,968	1,385	1,619
Other Receivables	10,749	565	532	501	471	444
Change in Inventory	60,811	8,156	(470)	5,743	(642)	(1,407)
Accounts Payable and Accrued Liabilities	5,060	(45,087)	15,116	7,768	7,547	8,453
Insurance Reserves and Unearned Premiums	(16,208)	0	0	0	0	0
Deferred Income Taxes	(378)	465	787	442	465	509
Other Assets	(31,095)	0	0	0	0	0
Other Long-Term Obligations	(14,548)	(341)	(344)	(348)	(361)	(355)
Cash Provided by Operations	(16,226)	(23,699)	38,213	43,313	38,302	49,720
Loans Originated	(319,464)	(68,533)	(72,037)	(76,293)	(80,809)	(85,893)
Principal Receipts on Loans/Sale of Loans	22,506	0	0	0	0	0
Sale of Loans	328,411	38,032	107,983	75,443	105,398	49,205
Cash Provided/(Used) by Operating Activities	\$ 21,227	\$ (54,200)	\$ 72,059	\$ 42,463	\$ 50,591	\$ 13,032
Investing Activities						
Acquisition of Properties & Facilities	16,490	(8,000)	(10,000)	(12,000)	(14,000)	(16,000)
Other	0	0	0	0	0	0
Cash Provided/(Used) by Investing Activities	\$ 16,490	\$ (8,000)	\$ (10,000)	\$ (12,000)	\$ (14,000)	\$ (16,000)

Oakwood Homes
5-Year Plan
Consolidated

	Forecast FY 2003	Forecast FY 2004	Forecast FY 2005	Forecast FY 2006	Forecast FY 2007	Forecast FY 2008
Consolidated Cash Flow						
Financing Activities:						
Net Borrowings/(Repayments) on Short-Term Credit Facilities	(34,060)	32,932	(25,137)	548	17,718	28,502
Net Borrowings/(Repayments) on DIP	1,990	(2,101)	0	0	0	0
Net Borrowings/(Repayments) on Fresh Start Revolver	0	27,058	(30,920)	(6,937)	0	0
Payments on Notes and Bonds	(753)	0	0	0	0	0
Cash Provided/(Used) by Financing Activities	\$ (32,823)	\$ 57,200	\$ (62,057)	\$ (6,389)	\$ 17,718	\$ 28,502
Cash and Cash Equivalents:						
Beginning of Period	20,107	25,000	20,000	20,000	45,074	74,247
Net Increase/(Decrease) in Cash and Cash Equivalents	4,892	(5,000)	0	25,074	29,170	25,594
Cash and Cash Equivalents at End of Period	\$ 25,000	\$ 20,000	\$ 20,000	\$ 45,074	\$ 74,247	\$ 99,761

Oakwood Homes
5-Year Plan
Consolidated

Consolidated Balance Sheet	Forecast FY 2003	Forecast FY 2004	Forecast FY 2005	Forecast FY 2006	Forecast FY 2007	Forecast FY 2008
Assets:						
Cash and Cash Equivalents	\$ 25,000	\$ 20,000	\$ 20,000	\$ 45,074	\$ 74,247	\$ 99,781
Loans and Investments						
Loans Held for Sale	49,051	79,552	43,708	44,555	21,968	58,054
Retained Interests	18,754	21,632	30,629	36,660	45,182	48,737
Less: Reserve for Uncollectable Receivables	(11,956)	(5,191)	(4,591)	(3,991)	(3,991)	(2,791)
Loans and Investments	55,849	95,993	69,744	77,224	63,737	104,600
Other Receivables						
Trade Accounts Receivable	27,279	32,056	36,040	38,395	40,705	43,293
Escrow Advances Receivable	15,510	16,459	17,466	18,535	19,669	20,873
Extensions Receivable	32,985	29,237	25,916	22,971	20,361	18,048
Other	33,215	32,651	32,119	31,618	31,147	30,703
Other Receivables	108,989	110,403	111,531	111,519	111,882	112,917
Inventories						
Manufactured Homes - New & Used	82,197	75,781	76,835	76,044	79,424	80,495
Raw Materials and Supplies	19,901	19,901	19,901	13,920	14,166	14,357
Work-in-Process	4,453	4,547	4,810	4,683	4,765	4,830
Land/Homes Under Development	10,577	8,741	8,094	7,051	5,984	6,085
Inventories	117,128	108,970	109,640	103,698	104,339	105,747
Properties and Facilities, Net	110,718	109,468	110,792	113,764	118,322	124,402
Loan Servicing Assets:	23,585	21,586	17,416	14,429	13,044	11,424
Other Assets	79,109	79,450	79,794	80,142	80,493	80,848
Total Assets	\$ 520,378	\$ 545,871	\$ 518,727	\$ 545,850	\$ 566,065	\$ 639,719

Oakwood Homes
5-Year Plan
Consolidated

Consolidated Balance Sheet	Forecast FY 2003	Forecast FY 2004	Forecast FY 2005	Forecast FY 2006	Forecast FY 2007	Forecast FY 2008
Liabilities and Shareholder's Equity						
Liabilities Not Subject To Compromise						
Short-Term Borrowing						
CS First Boston Loan Purchase Facility	14,940	47,271	19,134	19,682	1,963	30,465
Revolver	11,969	0	0	0	0	0
Fresh Start Revolver	0	38,667	5,937	0	0	0
Short-Term Borrowings	26,929	87,128	25,071	19,682	1,963	30,465
Accounts Payable and Accrued Liabilities						
Accounts Payable	30,719	37,136	45,946	48,725	51,358	54,322
Servicing Liability	0	0	0	0	0	0
Accrued Warranty	6,949	6,361	7,154	7,592	8,058	8,593
Accrued Compensation	8,377	5,808	6,210	6,506	6,720	6,991
Other	79,206	49,869	54,969	69,222	63,455	68,138
Accounts Payable and Accrued Liabilities	125,251	99,164	114,280	122,044	129,591	138,044
Insurance Reserves and Unearned Premiums	66	66	66	66	66	66
Deferred Income Taxes	5,791	6,245	7,032	7,474	7,939	8,448
Liabilities Subject To Compromise						
Notes and Bonds Payable	308,434	7,112	7,112	7,112	7,112	7,112
Accounts Payable and Accrued Liabilities	66,278	0	0	0	0	0
Other Long-Term Obligations	381,879	0	0	0	0	0
Shareholder's Equity	(394,248)	0	0	0	0	0
Fresh Start Shareholder's Equity	0	346,156	365,166	389,473	419,394	455,684
Total Liabilities and Shareholder's Equity	\$ 520,378	\$ 545,871	\$ 518,727	\$ 545,850	\$ 566,065	\$ 639,719

Oakwood Homes
Projected Free Cash Flows
Five Year Plan

	Forecast FY 2003	Forecast FY 2004	Forecast FY 2005	Forecast FY 2006	Forecast FY 2007	Forecast FY 2008
EBIT	\$ 43,457	\$ 38,815	\$ 50,992	\$ 55,490	\$ 52,517	\$ 72,475
Depreciation & Amortization	9,500	9,250	9,577	9,028	9,442	9,920
Taxes	18,582	15,526	20,397	22,496	25,007	28,990
Capital Expenditures	6,000	8,000	10,000	12,000	14,000	16,000
Working Capital	100,867	120,209	106,701	93,173	88,630	80,620
Accounts Receivable	108,989	110,403	111,541	111,519	111,882	112,817
Inventory	117,125	108,970	109,440	103,698	104,359	105,747
Accounts Payable	125,251	99,164	114,280	122,044	129,591	138,044
Δ Working Capital	15,032	19,343	(13,508)	(13,528)	(6,543)	(6,010)
Reserve for Uncollectible Receivables	(6,567)	9,765	600	600	600	600
Sale of Loans	328,411	38,032	107,883	75,443	103,355	49,205
Increase in Retained Interests	1,208	2,878	8,997	6,032	8,502	3,574
Loans Originated	319,464	68,533	72,037	76,293	80,809	85,893
Free Cash Flows	\$ 32,650	\$ (34,948)	\$ 69,029	\$ 36,368	\$ 52,982	\$ 2,553
Stabilized Free Cash Flows					\$	\$8,815

LATE 2001 PROJECTIONS

- These late 2001 projections are among the most aggressive projections during the 2001 time period. The income and expense projections assume a recovery in the Manufactured Housing industry, substantial growth in OHC manufacturing and retail revenues, as well as financial servicing revenues which return to pre-crash levels.
- Summary Characteristics of these projections include:
 - Revenues increase from \$956 Million in FYE 2002 to \$1.515 billion by FYE 2007, representing a stabilized growth rate of approximately 9% by the end of the projection horizon
 - Gross margins increase from 30.9% in FYE 2003 to 34.1% in FYE 2007
 - EBITDA rises from \$61.9 Million in FYE 2002 to \$134.3 Million by FYE 2007
 - EBITDA Margins gradually rise to a level of 8.9% by FYE 2007
 - Free Cash Flow Before Debt Service is projected to range between negative \$23.8 Million in FYE 2004 and \$66.5 Million in FYE 2006. Stabilized Free Cash Flow reaches a level of \$82.7 Million by FYE 2007.

Oakwood Homes
Late 2001 Financial Projections

Pro Forma Financial Projections - QAC	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Revenues						
Total Manufacturing Revenues	\$ 929,800,000	\$ 983,600,000	\$ 1,055,700,000	\$ 1,162,300,000	\$ 1,257,700,000	\$ 1,372,980,000
Total Servicing Revenue	65,200,000	97,800,000	106,900,000	114,400,000	123,100,000	132,700,000
Other Revenue	45,100,000	7,400,000	9,600,000	9,600,000	9,600,000	9,600,000
Total Revenue	\$ 1,039,900,000	\$ 1,088,800,000	\$ 1,172,200,000	\$ 1,276,300,000	\$ 1,390,400,000	\$ 1,515,280,000
% Growth:		4.7%	7.7%	8.9%	8.9%	9.0%
Gross Profit	\$ 309,400,000	\$ 336,900,000	\$ 369,000,000	\$ 413,400,000	\$ 462,800,000	\$ 517,400,000
Gross Margin (% of Total Sales)	30.0%	30.9%	31.5%	32.4%	33.3%	34.1%
EBITDA	\$ 61,000,000	\$ 19,300,000	\$ 35,700,000	\$ 64,600,000	\$ 97,400,000	\$ 134,300,000
EBITDA Margin (% of Total Sales)	6.0%	1.8%	3.0%	5.1%	7.0%	8.9%
Cash Flow						
EBITDA	\$ 61,000,000	\$ 19,300,000	\$ 35,700,000	\$ 64,600,000	\$ 97,400,000	\$ 134,300,000
Less: Change in Working Capital & Other	(9,100,000)	600,000	(39,800,000)	(32,700,000)	(33,600,000)	(34,600,000)
Less: Change in Loans/Investments	(32,850,000)	5,400,000	(15,200,000)	(16,600,000)	2,300,000	(43,700,000)
Less: Change in Warehouse Facility	45,900,000	18,600,000	9,600,000	9,600,000	10,400,000	11,400,000
Less: Cash Capex	(16,600,000)	(13,000,000)	(14,000,000)	(16,000,000)	(16,000,000)	(17,000,000)
Free Cash Flow Before Debt Service	\$ 51,300,000	\$ 30,900,000	\$ (23,800,000)	\$ 10,900,000	\$ 66,500,000	\$ 50,400,000
Stabilized Cash Flows						\$ 52,760,000

MID 2001 PROJECTIONS

- The mid 2001 projections summarize data and projections contained in an “Oakwood Homes Discussion Materials” CSFB document dated March 2002 and containing aggressive projections and analyses as of July, 2001. As was the case with the other 2001 projections described in this report, the analyses appear to assume a substantial industry recovery and growing revenues which include financial service revenues.
- Summary Characteristics of these projections include:
 - Revenues increase from \$1.15 Billion in FYE 2001 to \$1.64 Billion in FYE 2005
 - EBITDA increases from \$21.9 Million to \$131.6 Million. The implied EBITDA Margin is projected to reach 8%.
 - Annual EBIT was projected to increase consistently from a negative \$34.7 Million for FY 2001 to \$70.6 Million for FY 2005
 - After tax income was projected to rise to an annual level of \$43.1 Million by FYE 2005
 - Cash Flow from Operations increases from \$21.9 Million in FYE 2001 to \$104.1 in FYE 2005
 - Free Cash Flow (unlevered) is projected to increase from a negative \$45.5 Million in FYE 2001 to \$90.8 Million in FYE 2005
 - Stabilized Free Cash Flow as of the end of the projection horizon was projected to be \$90.8 Million per year.

Oakwood Homes
Pro Forma Financial Projections
Mid 2001

	Projected FYE September 31				
	2001	2002	2003	2004	2005
Revenue	\$ 1,146,100,000	\$ 1,482,400,000	\$ 1,543,000,000	\$ 1,588,000,000	\$ 1,644,000,000
EBITDA	\$ 21,900,000	\$ 68,700,000	\$ 85,300,000	\$ 98,500,000	\$ 104,100,000
EBIT	\$ (34,700,000)	\$ 13,700,000	\$ 28,400,000	\$ 38,000,000	\$ 43,100,000
Goodwill and Intangible Asset Amortization	\$ -	\$ -	\$ -	\$ -	\$ -
Pre-Tax Income	\$ (34,700,000)	\$ 13,700,000	\$ 28,400,000	\$ 38,000,000	\$ 43,100,000
Less: Income Taxes @ 39%	\$ -	\$ -	\$ -	\$ 8,500,000	\$ 27,500,000
After-Tax Operating Income	\$ (34,700,000)	\$ 13,700,000	\$ 28,400,000	\$ 38,000,000	\$ 43,100,000
Plus: Depreciation & Amortization	\$ 56,600,000	\$ 68,000,000	\$ 86,900,000	\$ 89,900,000	\$ 91,000,000
Operating Cash Flow	\$ 21,900,000	\$ 68,700,000	\$ 85,300,000	\$ 98,500,000	\$ 104,100,000
Plus: (Increase) Decrease in Working Capital and Loan Trading	\$ (64,400,000)	\$ (77,000,000)	\$ -	\$ -	\$ -
Less: Capital Expenditures	\$ 13,000,000	\$ 12,000,000	\$ 12,400,000	\$ 12,000,000	\$ 13,300,000
Unlevered Free Cash Flow	\$ (45,500,000)	\$ (20,300,000)	\$ 72,900,000	\$ 86,500,000	\$ 90,800,000

WEIGHTED AVERAGE COST OF CAPITAL

- The discount rate applicable to free cash flow to the firm is the Weighted Average Cost of Capital, which is the weighted average of the required return to equity and the cost of debt.

- The formula for the Weighted Average Cost of Capital is as follows:

$$WACC = R_{\text{Equity}} [E/C] + (1-T)[D/C]R_{\text{Debt}}$$

where:

WACC = Weighted Average Cost of Capital

R_E = Cost of Equity Capital

R_{Equity} = $R_f + \beta_L[R_m - R_f]$, per Capital Asset Pricing Model

R_f = Risk Free Return

R_m = Overall Market Return

$R_m - R_f$ = Market Risk Premium

β_L = Subject Company Leveraged Beta Value

= $\frac{\text{Covariance, Stock Price \& Market Index}}{\text{Variance of Market Returns}}$

T = Average Tax Rate

E/C = Equity to Total Capitalization

D/C = Debt to Total Capitalization

R_{Debt} = Cost of Debt Capital (interest rate)

- The required rate of return to equity is the discount rate attributable to free cash flows to equity (i.e., after debt service), and is estimated utilizing the Capital Asset Pricing Model.
- The Capital Asset Pricing Model, stripped of most of its underlying mathematical and statistical framework, states that investors in organized markets tend to price capital assets and securities so

that the expected return on such assets or securities is equal to the return on a riskless security, plus a premium for the risk which is relevant to the subject asset or business. In turn, this "risk premium" is proportional to the asset's price volatility relative to that of an "average" stock or security.

- The basic mathematical framework of the CAPM is:

$$R_i = R_F + B_i [E(R_M) - R_F]$$

where:

R_i = expected rate of return on security i, which is equal to the capitalization rate relevant to income from security i;

R_F = rate of return (interest rate) on a risk-less security, usually U.S. Treasury securities;

$E(R_M)$ = expected rate of return on a portfolio consisting of all stocks; it is also the rate of return on an "average" stock; thus

$E(R_M) - R_F$ = the market risk premium, or the "price of risk," for an average stock; it is the additional return over the riskless rate required to compensate investors for assuming an "average" amount of risk;

B_i = the relative volatility of the shares of firm or industry i; known as the "beta coefficient," it measures the sensitivity of the return on security i relative to general market movements. For the average security or asset, $B = 1$. The greater the risk, or volatility of return, the greater is B. Thus:

$B_i[E(R_M) - R_F]$ = the risk premium on the subject security, which is less than, equal to, or greater than the premium on an average security, depending on whether its beta value is less than, equal to, or greater than one.

- Leveraged beta values for Oakwood can be estimated by determining the “asset beta” (i.e., unleveraged beta) typical for the subject industry, and then releveraging to account for the specific debt to capital and equity to capital ratios applicable to the subject company, using the following formula:

$$\beta_L = \beta_U [1 + (1-T)(D/E)]$$

Where:

β_L = levered beta

β_U = unlevered beta

- In determining the appropriate beta values for calculating the required return to equity applicable to Oakwood Homes Corp., financial data with respect to the following competitor companies was reviewed:

Clayton Homes
 Champion Enterprises
 Palm Harbor Homes
 Nobility Homes
 Skyline Corp.
 Cavalier Homes
 Coachmen Industries
 Southern Energy Homes
 Liberty Homes
 Fleetwood Enterprises

In addition, Ibbotson Associates data for companies in SIC Code 2451 was reviewed.

- Analysis of the applicable Equity Risk Premium was based on published studies and Ibbotson Associates data. These studies imply an Equity Risk Premium as of the dates of value of this report in a range of 4% to 7%. Based on the economic conditions then applicable as well as most recent Ibbotson studies, the Equity Risk Premium was estimated to be 6%.

- The required return to equity for OHC would also be subject to adjustments for size and specific risk. The market capitalization for OHC places it in the small firm, probably tenth decile, category. Similarly a low market to book value ratio and high industry risk imply a specific risk premium.
- Our analyses resulted in the following valuation parameters for use in the CAPM as applied to Oakwood:

β_U	= 0.93
β_L	= 1.07
Debt/Capital	= 10%
Equity/Capital	= 90%
Size Premium	= 2.9% - 3.5%
Specific Risk Premium	= 3% - 5%
R_F	= 5.5%
- The resulting range of values for R_E is 18% to 20%
- Assuming a cost of debt in the range of 10% to 12% results in a range of applicable values for WACC between 16.8% and 18.6%, with most values approximately 18%.

FAMA-FRENCH MODEL

- The Fama-French Three Factor Model incorporates information with respect to a company's size and financial risk in addition to the market factor used in the CAPM. Small companies and financially distressed companies (as measured by higher book-to-market ratios) demonstrate more risk, which implies a higher cost of equity.
- The formula for the Fama-French Model is:

$$E(R_i) - R_f = \beta_m RP_m + \beta_s RP_s + \beta_v RP_v$$

Where:

 - $E(R_i)$ = expected return on security i;
 - R_f = rate on risk-free asset;
 - β_m = market coefficient in the Fama-French regression;
 - RP_m = expected market risk premium;
 - β_s = small-minus-big (SMB) coefficient in the Fama-French regression;
 - RP_s = the expected SMB risk premium, estimated as the difference between the historical average annual returns on the small-capitalization and large-capitalization portfolios;
 - B_v = high-minus-low (HML) coefficient in the Fama-French regressions; and
 - RP_v = the expected HML risk premium, estimated as the difference between the historical average annual returns on the high book-to-market stocks and the low book-to-market stocks.
- Ibbotson Associates reports that the Fama-French analysis of the Cost of Equity Capital for SIC Code 2451, the Mobile Home Industry, with data inclusive of Oakwood Homes, is in a range of 20.58% to 21.55%
- The Weighted Average Cost of Capital results derived from the Fama-French Model were in the range of 19.76% to 20.54%

OHC SEPTEMBER 2002 DCF VALUATION

- The Enterprise Value (i.e., Asset Value) of OHC as of September 2002 can be estimated by application of the discount rate analysis and terminal value analysis to the Free Cash Flows derived from the Five Year Plan projections.
- The present value of the Free Cash Flows, utilizing a discount rate range of 16% to 20%, is in an overall range of \$82.5 Million to \$92.75 Million (rounded). The primary range is \$82.5 Million to \$87.5 Million.
- The Continuing Value of the OHC Cash Flows (i.e., present value of OHC Terminal Value) can be obtained by application of a capitalization rate given by the Gordon Model:

Cap Rate = $1/(\text{Discount Rate} - \text{Growth Rate})$

Or by application of a multiple equal to 5 x Final Year EBITDA.

- Application of the foregoing Terminal Value Analyses yields an overall value range for OHC's continuing value of between \$133.1 Million and \$242 Million, with a primary range of \$133.1 Million to \$168.3 Million.
- The resulting Enterprise Value range is \$215 Million to \$270 Million. The estimated value is \$245 Million.
- In addition to the above, the Income & Expense projections for the Five Year Plan imply that there are some excess assets on the OHC balance sheet as of September 2002, primarily consisting of excess inventory. The maximum likely value of these excess assets was in a range of \$50 Million to \$60 Million.
- The Enterprise Value derived for Oakwood as of September 2002 was \$300 Million. Oakwood's debt plus guarantee obligations totaled approximately \$510 Million:

Short Term Borrowings:	\$59.0	
Notes & Bonds Payable:	309.2	
B-2 Guarantees:	144.0	
Total:	<u>\$512.2</u>	Million
Rounded:	\$510.0	Million

- Oakwood was substantially insolvent as of September, 2002, as its Enterprise Value (Asset Value) was \$210 Million less than the value of its Debt and B-2 Guarantees.

Oakwood Homes
Value Analysis Summary
Five Year Plan

Free Cash Flows:

Discount Rate	18%	18%	20%
Present Value	\$ 92,758	\$ 87,447	\$ 82,572

Terminal Value #1 \$ 441,975 (5 Yr, 2008 EBITDA)

Discount Rate	18%	18%	20%
Present Value	\$ 169,092	\$ 152,508	\$ 137,970

Terminal Value #2

Discount Rate	18%	18%	18%	18%	20%	20%
Growth Rate	4%	5%	4%	5%	4%	5%
Terminal Value	\$ 530,119	\$ 589,487	\$ 464,388	\$ 498,796	\$ 397,569	\$ 432,290
Present Value	\$ 217,583	\$ 241,960	\$ 168,320	\$ 184,770	\$ 133,152	\$ 144,773

Enterprise Value Range:

Discount Rate	18%	18%	18%	18%	18%	18%	20%	20%	20%
Growth Rate	TV #1	4%	5%	TV #1	4%	5%	TV #1	4%	6%
Range	\$ 261,850	\$ 310,841	\$ 334,708	\$ 240,055	\$ 255,766	\$ 272,216	\$ 220,542	\$ 215,724	\$ 227,345

OHC SEPTEMBER 2001 DCF VALUATION

- The Enterprise Value of OHC as of September 2001 can be estimated by application of the discount rates derived above to the 2001 Free Cash Flows developed in the mid 2001 and late 2001 projections.
- Application of the discount rates, stabilized growth rates and EBITDA multiples described above to the late 2001 projected Free Cash Flows results in a primary Enterprise Value range of \$280 Million to \$353 Million.
- Application of the discount rates, stabilized growth rates and EBITDA multiples to mid-2001 Projected Free Cash Flows results in an Enterprise Value range between \$305 Million and \$373 Million.
- Most of the Enterprise Value analyses cluster around \$350 Million. Therefore, the implied Enterprise Value for Oakwood as of September 2001 was \$350 Million.
- Oakwood's debt plus guarantee obligations as of September 2001 totaled approximately \$470 Million:

Short Term Borrowings:	\$47.5	
Notes & Bonds Payable:	323.1	
B-2 Guarantees:	100.0	
Total:	<u>\$470.6</u>	Million
Rounded:	\$470.0	Million

- Oakwood was substantially insolvent as of September, 2001, as its Enterprise Value (Asset Value) was \$120 Million less than the value of its Debt and B-2 Guarantees.

Oakwood Homes
Value Analysis Summary
Late 2001 Financial Projections

Free Cash Flows

Discount Rate	16%	18%	20%
Present Value	\$ 110,307,997	\$ 104,540,672	\$ 98,295,460

Terminal Value #1

EBITDA '07 Multiple	\$ 671,500,000		
Discount Rate	16%	18%	20%
Present Value	\$ 275,611,974	\$ 248,744,779	\$ 224,883,991

Terminal Value #2

Assumed Growth Rate	4%		
2008 Stabilized Free Cash Flow	\$ 86,008,000		
Cap Rates	12%	14%	16%
Capitalized Values	\$ 716,733,333	\$ 614,342,857	\$ 537,650,000
Discount Rate	16%	18%	20%
Present Values	\$ 294,177,645	\$ 227,971,970	\$ 180,024,407

Terminal Value #3

Assumed Growth Rate	5%		
2008 Stabilized Free Cash Flow	\$ 86,835,000		
Cap Rates	11%	13%	15%
Capitalized Values	\$ 789,409,091	\$ 667,961,538	\$ 578,900,000
Discount Rate	16%	18%	20%
Present Values	\$ 324,006,847	\$ 247,434,021	\$ 193,872,439

Enterprise Value Range

At Discount Rate	16%	18%	20%
PV of FCF + PV of Terminal Value #1	\$385,919,971	\$353,285,450	\$324,179,462
PV of FCF + PV of Terminal Value #2	\$404,485,642	\$332,112,042	\$279,319,868
PV of FCF + PV of Terminal Value #3	\$434,314,844	\$351,074,692	\$293,167,899

Oakwood Homes
Value Analysis Summary
Financial Projections
Mid 2001

Free Cash Flows

Discount Rate	16%	18%	20%
Present Value	\$ 82,900,779	\$ 75,071,769	\$ 67,944,959

Terminal Value #1

EBITDA '05 Multiple	\$ 658,000,000		
Discount Rate	16%	18%	20%
Present Value	\$ 313,282,364	\$ 287,617,864	\$ 264,435,442

Terminal Value #2

Assumed Growth Rate	4%		
2006 Stabilized Free Cash Flow	\$ 94,432,000		
Cap Rates	12%	14%	16%
Capitalized Values	\$ 786,933,333	\$ 674,514,286	\$ 590,200,000
Discount Rate	16%	18%	20%
Present Values	\$ 374,669,202	\$ 294,836,411	\$ 237,188,143

Terminal Value #3

Assumed Growth Rate	5%		
2006 Stabilized Free Cash Flow	\$ 95,340,000		
Cap Rates	12%	14%	16%
Capitalized Values	\$ 794,500,000	\$ 681,000,000	\$ 595,875,000
Discount Rate	16%	18%	20%
Present Values	\$ 378,271,791	\$ 297,671,376	\$ 239,468,798

Enterprise Value Range

At Discount Rate	16%	18%	20%
PV of FCF + PV of Terminal Value #1	\$ 398,183,143	\$ 362,689,633	\$ 332,380,401
PV of FCF + PV of Terminal Value #2	\$ 457,569,982	\$ 369,908,180	\$ 305,133,102
PV of FCF + PV of Terminal Value #3	\$ 461,172,570	\$ 372,743,145	\$ 307,413,757

DCF CONCLUSIONS

- Oakwood Homes Corp was insolvent by September 2001, and more so by September 2002.
- Oakwood's Enterprise Value fell between September 2001 and September 2002, while the amount of its Debt plus B-2 Guarantees increased.
- By FYE 2001 it was clear that business conditions and Free Cash Flows were not likely to improve sufficiently to allow OHC's Enterprise Value to reach or exceed the value of its Debt plus Guarantees within a reasonable time frame.
- By September 2001, the likelihood of OHC's insolvency being reversed was remote, and by September 2002 OHC's continued insolvency was a virtual certainty.
- Continued securitization and guaranteed B-2 issuance resulted in dissipation of OHC's Enterprise Value, i.e. reduction in the value of corporate assets.

EQUITY AS A CALL OPTION

- Equity in a highly leveraged distressed firm, and a firm which is insolvent or operating in the zone of insolvency, can be viewed as an out-of-the-money call option on the Enterprise Value of the firm.
- Equity in such firms may have value, even if the firm is insolvent, because of the time premium on the call option (i.e., the time to maturity of the firm's debt) and the possibility that asset values may increase to levels above the face value of the debt before the maturity date of the debt, in view of the variance of asset value.
- The analysis of equity value in an insolvent or distressed firm as a call option on future firm value has meaning only for limited liability equity investors whose potential losses are limited to the acquisition price of the equity, and whose potential gains, if any, are a function of the extent to which future asset values may exceed debt values. Such an equity investor can potentially benefit from large "upside" variance in value while avoiding most of the "downside" variance. Option theory is not directly applicable to decision makers for the firm as a whole, because they face not only upside variance but significant downside risk as well, far beyond the limited risk faced by the hypothetical equity investor.
- Given the above description of equity value as a call option on firm value, the key variables in such an analysis are:
 1. Underlying asset value
 2. Variance of asset value
 3. Strike price on the option
 4. Time to expiration
 5. Interest rates

BLACK-SCHOLES MODEL

- The most frequently used valuation model for valuing call options is the Black-Scholes Model, which estimates the value of an option using a relatively small number of input variables.
- In the Black Scholes Model the value of Equity in an insolvent firm, viewed as a call option on the firm value, is a function of the following variables:

S	=	Current value of the underlying asset
	=	Enterprise value of the firm
K	=	Strike price of the option
	=	Face value of the firm's debt
t	=	Life to expiration of the option
	=	Weighted average duration of the debt
r	=	Risk-free interest rate corresponding to life of the option
	=	U.S. Treasury Bond rates corresponding to duration of firm's debt
σ^2	=	Variance in \ln (value) of underlying asset
	=	Variance of Enterprise Value of firm

- The value of a call option (i.e., the value of equity in an insolvent firm) is given by:

$$\text{Equity Value} = SN(d_1) - Ke^{-rt}N(d_2)$$

Where:

$$d_1 = \frac{\ln(S/K) + (r + (\sigma^2/2))t}{\sigma\sqrt{t}}$$

$$d_2 = d_1 - \sigma\sqrt{t}$$

and:

$$e^{-rt} = \text{present value factor reflecting the delay until the debt becomes due}$$

$N(d_1)$ and $N(d_2)$ are cumulative normal probabilities based on the values of d_1 and d_2

- In the Black-Scholes Model, increases in Enterprise Value, the variability (i.e., variance) of Enterprise Value, duration of firm debt and interest rates will tend to increase Equity Values, while increases in the Face Value of firm debt will tend to decrease equity values.

- The analyses developed above can be used to derive inputs in the Black-Scholes Model for valuation of the Equity Value of Oakwood Homes Corp. as a distressed firm.

VALUATION OF OAKWOOD HOMES EQUITY AS CALL OPTION

- The inputs for valuation of OHC Equity as of September 2001 and September 2002 utilizing the Black-Scholes Model are:

Enterprise Value:

9/01 : \$350 Million

9/02 : \$300 Million

Face Value of Debt & Guarantees:

9/01 : \$470 Million

9/02 : \$510 Million

Weighted Average Debt Duration:

9/01 : 5.42 years

9/02 : 4.42 years

Standard Deviation in Enterprise Value (per Damodaran data set):

9/01 : 40.85%

9/02 : 45.19%

Risk Free Interest Rate:

9/01 : 4.6%

9/02 : 3.6%

- The resulting model output is:

- September 2001:

d_1 = -0.077782711

$N(d_1)$ = 0.46900045

d_2 = -0.311463049

$$N(d_2) = 0.377724315$$

$$\text{Equity value} = \$25,795,270$$

$$\text{Value of Outstanding Debt + Guarantees} = \$324,204,730$$

Rounded to:

$$\text{Equity} = \$25.8 \text{ Million}$$

$$\text{Debt + Guarantees} = \$324.2 \text{ Million}$$

◦ September 2002:

$$d_1 = -1.654982583$$

$$N(d_1) = 0.048964015$$

$$d_2 = -1.866007463$$

$$N(d_2) = 0.031020161$$

$$\text{Equity value} = \$1,196,180$$

$$\text{Value of Outstanding Debt + Guarantees} = \$298,803,820$$

Rounded to:

$$\text{Equity} = \$1.2 \text{ Million}$$

$$\text{Debt + Guarantees} = \$298.8 \text{ Million}$$

- Implication: Despite its insolvency as of September 2001, OHC's equity had some significant value as a call option on future firm value, but this value was almost completely dissipated by September 2002.
- In the Black-Scholes Model, $N(d_2)$ can be interpreted as the probability that $S > K$ before the firm's debt comes due, so that:

$$1 - N(d_2) = \text{default probability}$$

- For OHC, the foregoing inputs imply an increase in default probability from 9/01 to 9/02:

Default Probability at 9/01: 62.3%

Default Probability as 9/02: 96.9%

Increase in Default Probability: 34.6%

Correspondingly:

Probability of Return to Solvency at 9/01: 37.7%

Probability of Return to Solvency at 9/02: 3.1%

Reduction in Likelihood of Return to Solvency: 34.6%

- In addition, the Black-Scholes Model implies:

Reduction in Equity Valued as Call Option: \$24.6 Million

Reduction in Value of Debt & Guarantees: \$25.4 Million

- This analysis indicates that by September 2001 OHC was insolvent and faced a high and increasing probability of default. Further, the likelihood of a return to solvency was remote by September 2001, and continued insolvency was virtually certain by September 2002. These conclusions follow from the analysis even using the extremely aggressive cash flow projections of mid 2001 and late 2001. It follows that more realistic cash flow projections as of mid to late 2001 would have resulted in the conclusion that OHC was even more insolvent, and that the likelihood of a return to solvency was even more remote, than depicted above.
- Analysis of Equity Value, Debt Value and Default Probabilities for OHC supports conclusion that OHC was “a bad business getting worse.”

CONCLUSIONS

- Oakwood Homes was quite insolvent by September, 2001, and given the extent of its insolvency, was certainly insolvent for a number of months before then.
- By September, 2001, and for several months before, it was apparent that the likelihood of OHC recovering from its insolvency as a result of improving asset values was slim.
- By September, 2002, the extent of OHC's insolvency had increased substantially and the prospects of a recovery to a solvent condition had become even more remote.
- Continued operation of OHC's business model, involving securitization of loans and guaranteeing certain tranches of the securities, had the following impacts on OHC's asset values, debt and guarantee values and solvency between September 2001 and September 2002:
 - Enterprise value fell from \$350 Million to \$300 Million
 - Face value of debt plus present value of guarantee payments increased from \$470 Million to \$510 Million
 - The extent of OHC's insolvency rose from a negative equity of \$120 Million to a negative equity of \$210 Million
- In turn, from the perspective of valuing OHC's equity as a call option on firm value, continued operation of OHC's business model resulted in the following:
 - Equity value decreased from \$25.8 Million to \$1.2 Million
 - Debt value decreased from \$324.2 Million to \$298.8 Million
 - OHC's probability of default increased from 62.3% to 96.9%
- Oakwood Homes suffered damages as a result of continued operation of its business model in an amount of at least \$50 Million. In addition, OHC paid fees related to the continuation of a business model which was destroying value. Such fees added to the damage suffered by OHC, and we are informed that the fees in question are in excess of \$20 Million.

This Expert Report sets forth a summary of my opinions in this matter, and does not constitute every detail of my expected expert testimony, or every fact supporting my opinions. Moreover, I may form additional opinions based on additional information which may become available after the date of this report. I therefore reserve the right to supplement and/or amend this report in response to such new information

Respectfully,

FLAVELL, TENNENBAUM & EDWARDS

A handwritten signature in black ink that reads "Michael Tennenbaum". The signature is written in a cursive, flowing style.

Michael Tennenbaum, Ph.D.

ADDENDUM

MICHAEL TENNENBAUM, PH.D.
PROFESSIONAL QUALIFICATIONS

PROFESSIONAL EXPERIENCE

1971 To Date Consulting Economist

Responsibilities: Economic and financial analyses and feasibility studies; going business, reorganization value, and real property valuations; market research studies; merger, acquisition, corporate reorganization and venture capital analyses; income loss studies; rendering of expert testimony.

TEACHING EXPERIENCE

1969 To 1986 Professor, Department of Economics
California State University, Long Beach

Responsibilities: Taught courses in Managerial Economics, Urban Economics, Financial Analysis, Capital Theory and Investment Analysis, Monetary Theory, Antitrust Economics.

RECENT REPRESENTATIVE ASSIGNMENTS

Valuation of department store assets of major publicly-held department store chain for bankruptcy reorganization

Valuation of large privately-held real estate company stock and assets in appraisal proceeding

Analyses of reorganization values, feasibility of plans of reorganization, and values of securities issued in connection with major bankruptcy reorganizations (e.g., DEP Corporation, House of Fabrics, Inc., Sun World, Inc., Carter Hawley Hale Stores, Inc., Ritter Ranch, Maguire Partners - Fifth & Grand Ltd., Wilshire Center Marketplace, Hechinger Company, Olympic Pipe Line Co.)

Statistical analysis of economic impacts of proximity to airport operations and toxic waste facilities on property values

Valuation of shareholders' equity in large, privately held theme restaurant company

Valuation and Financial Analysis of chain of home improvement stores

Valuation of going business concerns for merger, acquisition and divestiture

Major hotel, department store and office building feasibility studies and appraisals

Economic analysis of major network television program profitability

Economic feasibility analysis of developing luxury boxes at major sports stadium

Valuations of airport industrial properties, office buildings, hotels, condominium and apartment projects, shopping centers, marinas and cement plants

Valuation of losses in patent infringement cases

MICHAEL TENNENBAUM, PH.D., PROFESSIONAL QUALIFICATIONS
PAGE 2

QUALIFIED EXPERT WITNESS

Superior Courts in the California Counties of Los Angeles, Orange, San Bernardino, San Diego, Riverside, Santa Barbara, Santa Clara and Ventura, in Wayne and Oakland Counties in Michigan, King County, Washington

Federal Bankruptcy Courts in Los Angeles, San Diego, Santa Ana and San Bernardino, California, Las Vegas, Nevada, Salt Lake City, Utah, and Seattle, Washington

Federal District Courts in Los Angeles and San Diego, California

Federal Tax Court in Los Angeles, California

Chancery Court in Wilmington, Delaware

REPRESENTATIVE CLIENTS/REFERENCES

Law Firms - Southern California Area

Andrews & Kurth
Bergman & Wedner, Inc.
Blecher & Collins
Breidenbach, Swainston & Way
Buchalter, Nemer, Fields & Younger
Cox, Castle & Nicholson
Fulbright & Jaworski
Gibson, Dunn & Crutcher
Greenberg, Glusker, Fields,
Claman & Machfiger
Hennigan, Mercer & Bennett
Hughes, Hubbard & Reed
Irell & Manella
Jeffer, Mangels, Butler & Marmaro
Jones, Day, Reavis & Fogue
Katten, Muchin & Zavis
Kirkland & Ellis
Klee, Tuchin, Bogdanoff & Stern
Levene, Neale, Bender & Rankin
Lewis, D'Amato, Brisbois & Bisgaard

Loeb and Loeb
Manatt, Phelps & Phillips
McDermott, Will & Emery
Meserve, Mumper & Hughes
Morrison & Foerster
Munger, Tolles & Olson
Musick, Peeler & Garrett
O'Melveny & Myers
Pachulski, Stang, Ziehl & Young
Paul, Hastings, Janofsky & Walker
Pillsbury, Madison & Sutro
Richards, Watson & Gershon
Rosenfeld, Meyer & Susman
Schell & Delamer
Sheppard, Mullin, Richter & Hampton
Sidley, Austin, Brown & Wood
Skadden, Arps, Slate, Meagher & Flom
Stutman, Treister & Glatt
Weissmann, Wolff, Bergman, Coleman, &
Silverman

MICHAEL TENNENBAUM, PH.D., PROFESSIONAL QUALIFICATIONS
PAGE 3

Law Firms - Other Locations

Ackerman & Ackerman	Detroit, Michigan
Ashby & Geddes	Wilmington, Delaware
Bucknell, Stehlik, Sato & Stubner	Seattle, Washington
Culp, Guterson & Grader	Seattle, Washington
Danielson, Harrigan & Tollefson	Seattle, Washington
Dykema, Gossett, Spencer, Goodnow & Trigg	Detroit, Michigan
Foster, Pepper & Shefelman	Seattle, Washington
Greve, Clifford, Diepenbrock & Paras	Sacramento, California
Heller, Ehrman, White & McAuliffe	San Francisco, California
Hopkins, Sutter, Hamel & Park	Washington, DC
Murphy, Weir & Butler	San Francisco, California
Shulkin & Hutton	Seattle, Washington
Wilkie, Farr & Gallagher	New York, New York
Williams, Kastner & Gibbs	Seattle, Washington

Corporations

Aetna Insurance	Equitable Insurance
Aldrich, Eastman & Walch	Falcon Communications, Inc.
Alper Development Corporation	Federal Wholesale Toy Company
Ameron, Inc.	Forest City Properties, Inc.
The Arba Group	Goldman Sachs International
Arden Realty	Goldrich & Kest
Bank of America	Gordon Group Holdings
Beverly Hills Oil Company	Great Western Savings & Loan
Beverly Hills Transfer & Storage	Hilton Hotel Company
Blackstone Real Estate	House of Fabrics, Inc.
Bloomberg Financial	IML Trucking Company
British Petroleum/Shell Oil Company	The Irvine Company
Budget Rent a Car of Southern California	Johnson Controls, Inc.
C & R Clothiers, Inc.	Knudsen Foremost Dairies
C.R. Bard, Inc.	L'Ermitage Hotel Group
California Commerce Club	LaSalle Paper Company
CalMat Corporation	Leonard Green Partners
Carter Hawley Hale, Inc.	Lerner Shops of California, Inc.
Century Laminators, Inc.	Lockheed Corporation
Chevys Inc.	Maguire Partners
Communicom Corporation	MAXXAM, Inc.
Community Bank	The May Department Stores Company
Computer Communications, Inc.	MCA/Universal
Continental Development Corp.	McDonald's Corporation
Davis Walker Corporation	Mistele Oil & Gas Company
DEP Corporation	Modernfold, Inc.
Dolco Packaging Corporation	Monolith Portland Cement Company
Dollar Rent a Car	National Australia Bank
Edison Brothers Stores, Inc.	National Drum & Barrel Company
Emulex Corporation	NBL, Inc.
	Newfield Enterprises, Inc.

MICHAEL TENNENBAUM, PH.D., PROFESSIONAL QUALIFICATIONS PAGE 4

Corporations - continued

Oaktree Capital Management
Olympic Pipe Line Co.
Orient Express Hotels Co.
Paramount Ranch Company
Perceptronics, Inc.
Preferred Financial Corp.
Pritzker Realty Group
Ritz-Carlton Hotel Company
Simon Property Group

Shapell Industries
Southwest Savings & Loan
Sun World, Inc.
Thrifty Oil Company
Toys-R-Us
Twentieth Century-Fox Film Corp.
Union Oil Company
W.R. Grace & Company
Watt Industries

Government Agencies

U.S. Department of Justice
U.S. Department of Energy
California Attorney General's Office
California Department of Transportation
Los Angeles County Counsel's Office
Sacramento County Counsel
Port of Seattle
Los Angeles Unified School District

Santa Clara County Counsel
Southern California Rapid Transit District
City of Torrance
City of Long Beach
Burbank-Glendale-Pasadena Airport Authority
Los Angeles Coliseum Commission

EDUCATION

- 1973 University of California, Los Angeles
Ph.D., Economics
Fields of Concentration Included: Urban and Real Estate Economics; Monetary Analysis & Financial Markets; Microeconomic Theory; Capital Theory and Investment Analysis; Public Finance; Mathematical Economics
- 1967 M.A., Economics
- 1966 B.A., with honors, Economics and Mathematics

PROFESSIONAL AFFILIATIONS

American Economic Association
American Finance Association
Western Economic Association

Omicron Delta Epsilon, National Honor Society
National Association of Business Economists

Exhibit E

In The Matter Of:

**OAKWOOD HOMES CORPORATION, *et al.*/OHC LIQUIDATION
TRUST *v.*
CREDIT SUISSE, *et al.***

MICHAEL TENNENBAUM, Ph.D.
October 22, 2007

MERRILL LEGAL SOLUTIONS
25 West 45th Street - Suite 900
New York, NY 10036
PH: 212-557-7400 / FAX: 212-692-9171

TENNENBAUM, MICHAEL - Vol. 1

MICHAEL TENNENBAUM, Ph.D.

Page 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
Oakwood Homes Corporation, et al.,) No. 02-13396 (PJW)
Debtors,)
OHC Liquidation Trust,)
Plaintiff,)
vs.)
Credit Suisse (f/k/a Credit Suisse) Adversary
First Boston, a Swiss banking) Proceedings
corporation), Credit Suisse)
Securities (USA), LLC (f/k/a) No. 04-57060 (PJW)
Credit Suisse First Boston LLC),)
Credit Suisse Holdings (USA),) Volume I
Inc. (f/k/a Credit Suisse First) Pages 1-80
Boston, Inc.), and Credit Suisse)
(U.S.A.), Inc.), the subsidiaries)
and affiliates of each, and DOES)
1 through 100,)
Defendants.)
_____)

DEPOSITION OF:

MICHAEL TENNENBAUM, Ph.D.
MONDAY, OCTOBER 22, 2007
LOS ANGELES, CALIFORNIA

Reported by:

Felipe F. Carrillo
RPR, CSR No. 9555

MICHAEL TENNENBAUM, Ph.D.

2 (Pages 2 to 5)

Page 2	Page 4
<p>1 DEPOSITION OF MICHAEL TENNENBAUM, Ph.D., THE 2 WITNESS, TAKEN ON BEHALF OF THE DEFENDANT, AT 1901 3 AVENUE OF THE STARS, SUITE 1200, LOS ANGELES, 4 CALIFORNIA, ON MONDAY, OCTOBER 22, 2007, AT 9:44 A.M., 5 BEFORE FELIPE CARRILLO, CSR #9555, RPR. 6 7 APPEARANCES: 8 FOR PLAINTIFF: 9 LAW OFFICES OF STUTMAN, TREISTER & GLATT 10 BY: TONY CASTANARES, ATTORNEY AT LAW 11 1901 Avenue of the Stars 12 Suite 1200 13 Los Angeles, California 90067-6013 14 (310) 228-5755 15 16 FOR DEFENDANT: 17 LINKLATERS LLP 18 BY: R. PAUL WICKES, ATTORNEY AT LAW 19 1345 Avenue of the Americas 20 New York, New York 10105 21 (212) 903-9000 22 23 ALSO PRESENT: 24 Whitman Holt 25 Inga Kornev, Videographer</p>	<p>1 LOS ANGELES, CALIFORNIA; MONDAY, OCTOBER 22, 2007 2 9:44 A.M. 3 -oOo- 4 5 THE VIDEOGRAPHER: Here begins Volume I, 6 videotape No. 1 in the deposition of Dr. Michael 7 Tennenbaum, in the matter of OHC Liquidation Trust 8 versus Credit Suisse, et al., in the United States 9 Bankruptcy Court in the District of Delaware. The case 10 number is 02-13396. 11 Today's date is October 22, 2007. The time 12 on the video monitor is 9:45. The video operator today 13 is Inga Kornev, contracted by Merrill Legal Solutions, 14 at 25 West 45th Street, New York, New York. 15 This video deposition is taking place at 16 Shutman, Treister & Glatt, located at 1901 Avenue of the 17 Stars, Los Angeles, California, and was noticed by 18 R. Paul Wickes of Linklaters. 19 Counsel, please voice identify yourselves 20 and state whom you represent. 21 MR. WICKES: Paul Wickes of Linklaters for 22 Credit Suisse. 23 MR. CASTANARES: Tony Castanares, Stutman, 24 Treister & Glatt for plaintiff. 25 THE VIDEOGRAPHER: Thank you. The court</p>
Page 3	Page 5
<p>1 INDEX 2 3 WITNESS EXAMINATION PAGE 4 MICHAEL TENNENBAUM, Ph.D. 5 (BY MR. WICKES) 5 6 7 EXHIBITS MARKED FOR IDENTIFICATION: 8 NO. PAGE DESCRIPTION 9 EXHIBIT 601 5 STACK OF DOCUMENTS 10 11 EXHIBITS REFERRED TO PREVIOUSLY MARKED: 12 (NONE) 13 14 INFORMATION REQUESTED: 15 (NONE) 16 17 QUESTIONS INSTRUCTED NOT TO ANSWER: 18 (NONE) 19 20 21 22 23 24 25</p>	<p>1 reporter today is Felipe Carrillo of Merrill Legal 2 Solutions. 3 Will the reporter please swear in the 4 witness. 5 6 MICHAEL TENNENBAUM, Ph.D., 7 having been first duly sworn, 8 was examined and testified as follows: 9 10 THE VIDEOGRAPHER: Please begin. 11 MR. WICKES: Thank you. 12 13 EXAMINATION 14 BY MR. WICKES: 15 Q. All right. Good morning, Doctor. I take it from 16 materials included with your report that you are 17 experienced at the deposition process; is that right? 18 A. I think so. 19 Q. So you know the rules, and we don't need to go 20 through them this morning? 21 A. I think that's correct. 22 (THE STACK OF DOCUMENTS WERE 23 COLLECTIVELY MARKED DEFENDANT'S 24 EXHIBIT 601 FOR IDENTIFICATION.) 25 BY MR. WICKES:</p>

MICHAEL TENNENBAUM, Ph.D.

3 (Pages 6 to 9)

Page 6	Page 8
<p>1 Q. All right. I have put in front of you what's</p> <p>2 marked as Exhibit 601, which is your report.</p> <p>3 Well, let me ask you, is that a copy of your</p> <p>4 report in this matter?</p> <p>5 A. Yes.</p> <p>6 Q. And that Exhibit 601 has as its first page a</p> <p>7 cover letter from you to Stutman Treister; is that</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. And what's the date on the cover letter?</p> <p>11 A. April 27, 2007.</p> <p>12 Q. I don't see in the body of the report anywhere a</p> <p>13 date. Would I conclude properly that this report was</p> <p>14 concluded at or about April 27th, 2007?</p> <p>15 A. Yes.</p> <p>16 Q. All right. At the end of that report is -- the</p> <p>17 last few pages starting at page 54, is a document that</p> <p>18 lays forth your professional qualifications.</p> <p>19 Did you prepare that and attach it to your</p> <p>20 report?</p> <p>21 A. I did. I can't remember exactly when this</p> <p>22 particular document statement of professional</p> <p>23 qualifications was prepared, but it was before the</p> <p>24 report was prepared.</p> <p>25 Q. All right.</p>	<p>1 with respect to a company involved in the manufactured</p> <p>2 housing business?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Okay. So you don't bring to the work you've done</p> <p>5 here any particular knowledge or expertise in that</p> <p>6 business; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. When were you first contacted about the</p> <p>9 possibility that you might serve as an expert witness in</p> <p>10 this matter?</p> <p>11 A. It would have been early 2005.</p> <p>12 Q. And by whom were you first contacted?</p> <p>13 A. My recollection is that I got a phone call from</p> <p>14 Pam King (phonetic).</p> <p>15 Q. Okay. Who was that?</p> <p>16 A. She's an attorney working with the Stutman firm.</p> <p>17 Q. Okay. And did you -- did you work with Ms. King</p> <p>18 before?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. On how many occasions?</p> <p>21 A. One.</p> <p>22 Q. Okay. What was that matter?</p> <p>23 A. That was the Heckinger matter, also bankruptcy</p> <p>24 matter.</p> <p>25 Q. Also a bankruptcy matter in the District of</p>
Page 7	Page 9
<p>1 A. It's in the files in the office.</p> <p>2 Q. So this is just a standard form of your CV that</p> <p>3 was attached to the report when it was prepared?</p> <p>4 A. That's correct.</p> <p>5 Q. It indicates that you've been -- you were a</p> <p>6 professor of economics at Cal State Long Beach from 1969</p> <p>7 to 1986, and that from 1971 to date, you've been a</p> <p>8 consulting economist; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And in 1971 to date, have you been with the firm</p> <p>11 of Flavell, Tennenbaum & Edwards?</p> <p>12 A. I've been with Flavell, Tennenbaum & Edwards</p> <p>13 since 1975 or -6.</p> <p>14 Q. Okay.</p> <p>15 A. Preceding that -- preceding the partnership with</p> <p>16 Mr. Flavell, I had an independent consulting practice.</p> <p>17 Q. Okay. Have you ever had full-time employment</p> <p>18 other than as a professor at Cal State Long Beach or --</p> <p>19 as a consulting economist?</p> <p>20 A. No.</p> <p>21 Q. Okay. The document begins on page 54, includes</p> <p>22 some examples of previous engagements that you've worked</p> <p>23 on, and so on.</p> <p>24 Have you ever, prior to your engagement on</p> <p>25 the Oakwood matter, served as a consulting economist</p>	<p>1 Delaware; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Aside from Ms. King, had you, other than the</p> <p>4 Heckinger matter, ever worked with the Stutman Treister</p> <p>5 firm before?</p> <p>6 A. Yes.</p> <p>7 Q. On how many occasions?</p> <p>8 A. Going back over 30 some odd years, probably eight</p> <p>9 to ten.</p> <p>10 Q. And are you presently working on any engagements</p> <p>11 with the Stutman firm other than the Oakwood matter?</p> <p>12 A. No.</p> <p>13 Q. Have you worked before on a matter with</p> <p>14 Mr. Castanares?</p> <p>15 A. Yes.</p> <p>16 Q. What was that?</p> <p>17 A. Well, Heckinger --</p> <p>18 Q. Right.</p> <p>19 A. -- being the most recent one, I've worked with</p> <p>20 Mr. Castanares on a matter involving a development</p> <p>21 project here in Los Angeles on Wilshire Boulevard, going</p> <p>22 back to the early to mid 1980s, and worked on a matter</p> <p>23 involving a project in Calgary. I guess that was late</p> <p>24 '80s.</p> <p>25 Q. Okay. What did Ms. King tell you about the</p>

MICHAEL TENNENBAUM, Ph.D.

4 (Pages 10 to 13)

Page 10	Page 12
<p>1 Oakwood matter when she first contacted you?</p> <p>2 A. She said that they were -- she was involved in</p> <p>3 a -- in some litigation involving Oakwood Homes, and</p> <p>4 that there -- there would likely be issues involving</p> <p>5 valuation of Oakwood Homes and determination of the</p> <p>6 solvency of Oakwood Homes, and that they had an enormous</p> <p>7 raft of documents that they already had and were in the</p> <p>8 process of getting additional documents, so there will</p> <p>9 be a lot of documents to review.</p> <p>10 Q. Okay. Did she -- have you -- have you been</p> <p>11 involved in any matters concerning Oakwood Homes other</p> <p>12 than the litigation against Credit Suisse?</p> <p>13 A. Well, I'm not sure what the answer to that is. I</p> <p>14 did provide consultation with a firm in New York on --</p> <p>15 with respect to some matters involving Oakwood which did</p> <p>16 not lead to any expert testimony, and I can't remember</p> <p>17 the name of the firm. The lawyer I spoke with was a</p> <p>18 fellow named Halpren.</p> <p>19 Q. What was it you did for or with Mr. Halpren?</p> <p>20 A. Provided him with some consultation with respect</p> <p>21 to methodology, valuation methodology, and analyses of</p> <p>22 what would go into looking at present values of</p> <p>23 anticipated future cash flows under various assumptions.</p> <p>24 It was largely hypothetical, and that was the only</p> <p>25 meeting that I had with him.</p>	<p>1 A. I believe so, although, we didn't speak about</p> <p>2 that in any detail, to the best of my recollection. It</p> <p>3 was primarily focused on methodological aspects of doing</p> <p>4 a discounted cash flow analysis.</p> <p>5 Q. Were there anyone -- any nonlawyers in that</p> <p>6 conversation?</p> <p>7 A. Just me.</p> <p>8 Q. Okay. Did they give you any information at that</p> <p>9 meeting?</p> <p>10 A. Not that I recall. I received no documents that</p> <p>11 I recall either.</p> <p>12 Q. Did you share with them any of the documents that</p> <p>13 you had received in connection with your Oakwood</p> <p>14 engagement?</p> <p>15 A. No.</p> <p>16 Q. Did you share with them any information that you</p> <p>17 had received in connection with your Oakwood engagement?</p> <p>18 A. No.</p> <p>19 Q. All right. Back to when you first spoke to</p> <p>20 Ms. King.</p> <p>21 What did she tell you about the nature of</p> <p>22 the disputes between the Liquidation Trust and Credit</p> <p>23 Suisse?</p> <p>24 A. I don't recall specifically her telling me</p> <p>25 anything about the nature of the disputes, other than</p>
Page 11	Page 13
<p>1 Q. Was that meeting in the nature of an exploration</p> <p>2 about the possibility of employing you to work on</p> <p>3 Oakwood?</p> <p>4 A. No. It was -- I was already -- I was already</p> <p>5 working on Oakwood for the firm here. And I was asked</p> <p>6 to attend a meeting in New York with respect to some</p> <p>7 other issues that involved Oakwood, which I did not get</p> <p>8 involved in. But they wanted to have some idea as to</p> <p>9 valuation methodologies and how I was going about</p> <p>10 things. So I attended that meeting at Ms. King's</p> <p>11 request.</p> <p>12 Q. When was that meeting?</p> <p>13 A. I think it was mid to late 2005.</p> <p>14 Q. Did Ms. King attend the meeting?</p> <p>15 A. By telephone.</p> <p>16 Q. And who else attended the meeting?</p> <p>17 A. There were a couple of lawyers from Mr. Halpren's</p> <p>18 firm, whose names I do not recall, but it was at</p> <p>19 Mr. Halpren's offices.</p> <p>20 Q. And when you say they were interested in matters</p> <p>21 involving discounted cash flows, were those discounted</p> <p>22 cash flows of Oakwood?</p> <p>23 A. Yes.</p> <p>24 Q. And were they also interested in the question of</p> <p>25 solvency involving Oakwood?</p>	<p>1 that one of the issues that would likely come up in the</p> <p>2 litigation would be one that I -- they would want me to</p> <p>3 provide consultation with respect to and prospectively</p> <p>4 expert testimony with respect to, and that would be the</p> <p>5 issue of solvency of Oakwood and, correspondingly, the</p> <p>6 issue of the present value of the cash flows in prospect</p> <p>7 for Oakwood.</p> <p>8 Q. And you understood, didn't you, from that first</p> <p>9 conversation with Ms. King that her client would want</p> <p>10 you to conclude that, at whatever time was turned out to</p> <p>11 be relevant, that Oakwood was insolvent?</p> <p>12 A. Absolutely not. I did not have any understanding</p> <p>13 from Ms. King in that regard at all and would have</p> <p>14 rejected any insinuation like that.</p> <p>15 Q. So in your first conversation with Ms. King, you</p> <p>16 had no idea whether it would be her -- in her client's</p> <p>17 interest for Oakwood to be determined solvent or</p> <p>18 insolvent. Is that your testimony?</p> <p>19 A. That's correct.</p> <p>20 Q. When did you first come to have an understanding</p> <p>21 about that?</p> <p>22 A. As my analysis proceeded, and I generated</p> <p>23 calculations internally leading to a determination of</p> <p>24 what the cash flows and discounted cash flow valuation</p> <p>25 looked like, the framework of the litigation was --</p>

MICHAEL TENNENBAUM, Ph.D.

5 (Pages 14 to 17)

Page 14	Page 16
<p>1 became evident to me, both from documents and from 2 conversations with counsel.</p> <p>3 And, you know, I still don't claim to have 4 any lawyer's expertise as to what might benefit or what 5 might not benefit the Stutman firm's clients, but I do 6 have an analysis of solvency.</p> <p>7 Q. All right. Your resume indicates, Doctor, that 8 you have a lot of experience in bankruptcy matters; is 9 that correct?</p> <p>10 A. I think so.</p> <p>11 Q. Okay. When Ms. King first talked to you, did she 12 tell you her client was the OHC Liquidation Trust?</p> <p>13 A. I don't recall.</p> <p>14 Q. When did you first learn that the client was the 15 OHC Liquidation Trust?</p> <p>16 A. I'm not sure when I first learned it. It may 17 have been in that first conversation, but certainly 18 after looking at the -- at the complaint that was 19 forwarded to me shortly after my conversation with 20 Ms. King, I learned who the client was.</p> <p>21 Q. Okay. And when you say that saw that complaint 22 shortly after your first conversation with Ms. King, you 23 recognized that, among other things, the complaint 24 sought to recover what are alleged to be preferences and 25 fraudulent conveyances; is that right?</p>	<p>1 Liquidation Trust for your conclusion to be that the 2 company was insolvent?</p> <p>3 A. Probably.</p> <p>4 Q. It's not a subtle point, is it?</p> <p>5 A. Well, I think it is a subtle point. I want to 6 make sure that nobody gets the impression that my 7 analysis was influenced by the desire of the client, 8 because it wasn't.</p> <p>9 Q. What I meant by not a subtle point was that it's 10 not a subtle point that the plaintiff in an action 11 seeking to recover preferences in fraudulent conveyances 12 needs to have evidence that at the relevant times that 13 the company was insolvent?</p> <p>14 A. I don't believe that's a subtle point, no.</p> <p>15 Q. Okay. Are you the sole author of this report?</p> <p>16 A. Yes.</p> <p>17 Q. Did you receive assistance --</p> <p>18 A. Yes.</p> <p>19 Q. -- in preparing the report?</p> <p>20 From whom?</p> <p>21 A. I didn't receive assistance in preparing the 22 report. I did receive assistance in the work.</p> <p>23 Q. And who did you receive assistance from and tell 24 me what they did?</p> <p>25 A. Staff members at my firm. Tom Yoshioka worked on</p>
Page 15	Page 17
<p>1 A. That's my recollection, yes.</p> <p>2 Q. For somebody with your experience in bankruptcy, 3 is it difficult to put those two things together and 4 conclude what the OHC Liquidation Trust needed was an 5 opinion that the company was insolvent?</p> <p>6 A. I don't know what the OHC needed. I knew what I 7 could provide. What I could provide was an analysis. 8 Whether that analysis turns out to be useful or not to 9 the client is not something that I get involved in.</p> <p>10 Q. Okay. Is it your testimony this morning that you 11 performed your valuation exercise without any 12 understanding of whether OHC Liquidation Trust wanted a 13 conclusion to be that the company was solvent or 14 insolvent?</p> <p>15 A. It's my testimony that I perform my analysis 16 without taking it into account at all whether the 17 Liquidation Trust wanted an opinion as to the company 18 being solvent or insolvent. It had no affect on my 19 analysis whatsoever.</p> <p>20 Q. But you understand, Doctor, that's the answer to 21 a different question than the one I asked.</p> <p>22 The question I asked was not whether it had 23 an affect on your work or your opinion. The question I 24 asked was whether you understood at the time you were 25 doing your work that it was in the interest of the OHC</p>	<p>1 organizing documents, summarizing documents, determining 2 dates of various cash flows. Jason Tennenbaum, who is 3 my son, worked on cash flows and obtaining documents 4 with respect to determination of appropriate discount 5 rates, calculations. But primarily the time spent and 6 the work product is mine.</p> <p>7 Q. Who was it you said assisted by summarizing 8 documents?</p> <p>9 A. Tom Yoshioka.</p> <p>10 Q. Okay. You know, Doctor, there's been some 11 dispute in this matter about what of your files and work 12 papers has been turned over to the other side in this 13 litigation. You are familiar with that?</p> <p>14 A. I just saw some documents from your firm with 15 respect to that, yes.</p> <p>16 Q. Do you know whether the summaries prepared by 17 Mr. Yoshokowa (sic) were included in the materials stack 18 that have been provided to us?</p> <p>19 A. Yoshioka.</p> <p>20 Q. Yoshioka. Sorry.</p> <p>21 A. Yes, to the best of my knowledge, they have been. 22 Well, they were sent here. So I imagine they were 23 turned over to you.</p> <p>24 Q. All right. How are you paid for your work on 25 this engagement?</p>

MICHAEL TENNENBAUM, Ph.D.

6 (Pages 18 to 21)

Page 18	Page 20
<p>1 A. Hourly.</p> <p>2 Q. What are your total billings so far?</p> <p>3 A. Total billings of fees plus expenses add up to</p> <p>4 almost \$405,000, of which about 390 some odd thousand</p> <p>5 are fees, and I think it's about \$12,000 that are</p> <p>6 expenses.</p> <p>7 Q. Have you been paid to date?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. What's your hourly rate?</p> <p>10 A. \$395. Actually, currently it's 425, but it was</p> <p>11 395 on this assignment.</p> <p>12 Q. How many of your hours are involved in the</p> <p>13 billings that have been made so far?</p> <p>14 A. Almost all of the billings represent my hours,</p> <p>15 the vast majority. I would -- I would say probably no</p> <p>16 more than \$20,000 of the fees are -- represent hours of</p> <p>17 people in the firm other than me.</p> <p>18 Q. Do you know roughly how many of your hours are</p> <p>19 involved in those bills?</p> <p>20 A. If you take roughly 370,000 and divide by 395,</p> <p>21 you get a ballpark estimate. Whatever that is.</p> <p>22 Q. What would that be about, 1,000 hours?</p> <p>23 A. Well, something less than 1,000.</p> <p>24 Q. Okay. So, for example, did you yourself look at</p> <p>25 most of the documents that you were provided with</p>	<p>1 included amongst the documents that subsequently also</p> <p>2 came from the Stutman firm.</p> <p>3 Q. Okay. And how did Mr. Muir come to be giving you</p> <p>4 documents?</p> <p>5 A. I had a meeting with him in North Carolina in --</p> <p>6 over several days in 2006.</p> <p>7 Q. Who besides Stutman lawyers and Mr. Muir have you</p> <p>8 met with in connection with your work in this matter?</p> <p>9 A. Well, Mr. Halpren.</p> <p>10 Q. Well, I thought that was with respect to some</p> <p>11 different matter?</p> <p>12 A. It was the same issues, so I -- I don't know</p> <p>13 whether ...</p> <p>14 Q. Okay.</p> <p>15 A. I don't know whether they were separate, a</p> <p>16 separate matter or something related to this matter. I</p> <p>17 never got a determination as to what the relationship</p> <p>18 was.</p> <p>19 Q. All right.</p> <p>20 A. So other than the Stutman firm lawyers and</p> <p>21 Mr. Muir, that's it.</p> <p>22 Q. You never met Mr. Standish?</p> <p>23 A. No.</p> <p>24 Q. What about Mr. Shapiro, Dr. Shapiro?</p> <p>25 A. Yes, I did speak with Dr. Shapiro. I apologize</p>
Page 19	Page 21
<p>1 respect to this matter?</p> <p>2 A. I myself looked at all the documents that I was</p> <p>3 provided with.</p> <p>4 Q. Okay. And how were you provided documents?</p> <p>5 A. I was provided -- the documents came from the</p> <p>6 Stutman firm.</p> <p>7 Q. Okay. So in terms of sorting out from the entire</p> <p>8 universe of Oakwood documents to do what you looked at,</p> <p>9 that sort was done by lawyers at the Stutman firm and</p> <p>10 not by you; is that right?</p> <p>11 A. I'm not sure I understand the question.</p> <p>12 Q. Did you ever come here to Stutman's office to</p> <p>13 look at the Oakwood documents?</p> <p>14 A. Yes.</p> <p>15 Q. And were you given access to all of the documents</p> <p>16 that Stutman had or some subset?</p> <p>17 A. I would have no way of knowing what the answer to</p> <p>18 that question is.</p> <p>19 Q. So then the answer to my question is, what you</p> <p>20 know of the documents you received is you received</p> <p>21 documents that Stutman decided to give you?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay.</p> <p>24 A. There were some additional documents that I got</p> <p>25 from Mr. Muir, but those turned out to be the same or</p>	<p>1 for forgetting that.</p> <p>2 Q. And you said you spent several days in North</p> <p>3 Carolina with Mr. Muir?</p> <p>4 A. Yes.</p> <p>5 Q. And who else was there when you met with</p> <p>6 Mr. Muir?</p> <p>7 A. Mr. Kvarda was there for much of the time.</p> <p>8 Q. Okay.</p> <p>9 A. And another -- there were two other people from</p> <p>10 Mr. Kvarda's office whose names allude me. They were</p> <p>11 there for part of that series of meetings. That's it.</p> <p>12 Q. What was the purpose of your meeting with</p> <p>13 Mr. Muir?</p> <p>14 A. Get some background on the company, go over some</p> <p>15 of the issues and the calculations with respect to the</p> <p>16 internal valuation process for the securities that were</p> <p>17 on the books of Oakwood. I went over their valuation</p> <p>18 methodology and discussed projections that they were --</p> <p>19 that they had done at various points in time.</p> <p>20 Q. You said several days. How many days were you</p> <p>21 with Mr. Muir?</p> <p>22 A. I think it was three that I recall.</p> <p>23 Q. For the better part of three days?</p> <p>24 A. Yes.</p> <p>25 Q. At that time was Mr. Muir, to your understanding,</p>

MICHAEL TENNENBAUM, Ph.D.

7 (Pages 22 to 25)

Page 22	Page 24
<p>1 still under some sort of consulting arrangement with the 2 Liquidation Trust? 3 A. I believe so. 4 Q. Okay. And did you find Mr. Muir helpful? 5 A. Yes. 6 Q. Did you find him knowledgeable? 7 A. Yes. 8 Q. Did you find him to be open and forthcoming? 9 A. Seemed to be. 10 Q. Okay. Did you talk with Mr. Muir about what led 11 to the bankruptcy of Oakwood? 12 A. Yes. 13 Q. What did he tell you? 14 A. He indicated that he believed there were a number 15 of things that led to the bankruptcy of Oakwood, 16 including overly aggressive financing of sales of mobile 17 homes by the company and, indeed, by its competitors 18 in -- during the mid to late 1990s, which led to a -- an 19 over expansion of capacity in the industry both from a 20 manufacturing and a retail perspective; 21 The fact that there were a lot of loans that 22 were made to mobile home purchasers on terms that were 23 overly generous in terms of very high loan-to-value 24 ratios; 25 And they -- the resulting downturn in the</p>	<p>1 THE WITNESS: I think so. 2 BY MR. WICKES: 3 Q. Okay. And are these, the materials listed on 4 page four and at the top of page five, are they all 5 materials which you actively looked at in the course of 6 preparing this report? 7 A. To varying degrees, yes. 8 Q. Okay. This just isn't a list of things on your 9 bookshelf; this is stuff that you used in doing your 10 work; is that right? 11 A. No, there's lots more on my bookshelf. 12 Q. I would have thought so. 13 And on page six of your report at the end of 14 page six, there's a list of five reported court cases 15 that you say you looked at. How did you to look at 16 those cases? 17 A. They were sent to me by the Stutman firm. 18 Q. For what purpose? 19 A. As background material that might provide kind of 20 a framework for what the status of the law might -- 21 would be that might affect my analyses. 22 Q. And tell me exactly what was the scope of the 23 analysis that you were asked to prepare? 24 A. I was asked to prepare an analysis of the 25 solvency of Oakwood Homes going back as far from the</p>
Page 23	Page 25
<p>1 industry leading to a very large increase in 2 repossessions, which had the effect of impacting on 3 future sales as the repos became competitive with a new 4 product; 5 And that the repose also had negative 6 affects on securitizations; 7 And, finally, the recession of late 2000, 8 early 2001, which had relatively severe impact on areas 9 of the country where Oakwood did a substantial amount of 10 business. 11 Q. Okay. Did you find your conversation with 12 Mr. Muir helpful? 13 A. Yes. 14 Q. Was there a reason why in your report where you 15 cite the source of information available to you, you 16 didn't mention that you had spent three days with 17 Mr. Muir? 18 A. Well, I understood the purpose of the -- those 19 citations to be citations of documents that I relied on 20 rather than conversations. 21 Q. Okay. On page four of your report, carrying over 22 onto page five, there's a list of financial texts and 23 economic and financial journals that you reviewed in 24 connection with your report. Is that list complete? 25 (Brief pause)</p>	<p>1 date of bank, -- of the filing of its bankruptcy in 2 November of 2002 as I could, given the available 3 documents. 4 Q. Okay. So is it fair -- I don't want to put words 5 in your mouth. But is it fair to say that you were 6 asked to determine whether or not Oakwood was solvent at 7 some particular point in time, and then to carry that 8 analysis back as far in time as you could? 9 A. Yes. 10 Q. All right. Did you read the court cases that are 11 listed there on page six? 12 A. I didn't read all of them. I didn't read all of 13 each case. I did review them all. 14 Q. Okay. Tell me, for example, what did the case of 15 E-Toys Inc. versus Goldman Sachs have to do with the 16 question of whether or not Oakwood was solvent or 17 insolvent at any particular point in time? 18 MR. CASTANARES: Objection to form. 19 THE WITNESS: I don't recall what that case 20 dealt with. If I review it quickly, I might be able to 21 answer the question better. 22 As I indicated, I just scanned each of these 23 cases without going through it in any detail. 24 BY MR. WICKES: 25 Q. Did the cases that are listed there have an</p>

MICHAEL TENNENBAUM, Ph.D.

8 (Pages 26 to 29)

<p style="text-align: right;">Page 26</p> <p>1 impact on the conclusions you reached?</p> <p>2 A. No.</p> <p>3 Q. None?</p> <p>4 A. No.</p> <p>5 Q. So it was just a waste of time to look at them?</p> <p>6 A. In retrospect, probably.</p> <p>7 Q. Did you discuss those cases with Ms. King or with</p> <p>8 somebody else from Stutman Treister?</p> <p>9 A. I discussed, I think it was, the Trenwick case.</p> <p>10 I had a conversation about Trenwick with Mr. Yun on the</p> <p>11 telephone.</p> <p>12 Q. What do you remember about that conversation?</p> <p>13 A. My recollection is that case dealt with the issue</p> <p>14 of deepening insolvency, and that the Court didn't look</p> <p>15 favorably on the deepening insolvency.</p> <p>16 Q. Why would that information have been useful to</p> <p>17 you in doing the work you were doing?</p> <p>18 MR. CASTANARES: Objection to form.</p> <p>19 THE WITNESS: Well, I don't know that it</p> <p>20 did -- that it would have. But within the framework of</p> <p>21 my analyses, you know, one of the things that could be</p> <p>22 utilized, one of the approaches that could be utilized</p> <p>23 as a result of my analyses, is to look at insolvency of</p> <p>24 the company as of one date point in time, look at the</p> <p>25 insolvency at another date and time, and then it's just</p>	<p style="text-align: right;">Page 28</p> <p>1 BY MR. WICKES:</p> <p>2 Q. And what did he tell you that the Trenwick case</p> <p>3 had done with respect to deepening insolvency?</p> <p>4 MR. CASTANARES: Objection to form.</p> <p>5 THE WITNESS: He indicated that the Trenwick</p> <p>6 case appeared to have ruled against deepening insolvency</p> <p>7 as being some sort of a measure of damages.</p> <p>8 BY MR. WICKES:</p> <p>9 Q. Look to page 14 of your report, would you?</p> <p>10 A. (Complies).</p> <p>11 Q. From page 14 to 18 there's some information about</p> <p>12 the company, about Oakwood. What's the source of that</p> <p>13 information?</p> <p>14 A. Various documents that were CSFB documents, in</p> <p>15 terms of their presentations to the board of directors</p> <p>16 of Oakwood over various time periods in 2001, 2002.</p> <p>17 Q. Is it your testimony that all of the information</p> <p>18 on pages 14 to 18 comes from CSFB documents?</p> <p>19 A. And, also, I think one of them -- there was a</p> <p>20 report that was done by another brokerage firm that came</p> <p>21 from the Stutman firm. I think it also had a CSFB Bates</p> <p>22 stamp on it.</p> <p>23 And there were -- there were other documents</p> <p>24 that -- there's a memorandum, a couple of internal memos</p> <p>25 that were CSFB internal memos that had some of this</p>
<p style="text-align: right;">Page 27</p> <p>1 arithmetic to determine whether the company's insolvency</p> <p>2 had deepened.</p> <p>3 Whether that's an issue or whether that's</p> <p>4 a -- an issue for the Court or not, I have nothing to</p> <p>5 say. But the implications can be drawn from the</p> <p>6 analyses that I performed.</p> <p>7 BY MR. WICKES:</p> <p>8 Q. Who initiated the conversation between you and</p> <p>9 Mr. Yun about the Trenwick case?</p> <p>10 A. I think it was Mr. Yun. Although, I think I had</p> <p>11 seen the Trenwick case before he sent it to me. I think</p> <p>12 my son pointed it out to me.</p> <p>13 Q. Okay. And Mr. Yun called you, didn't he, and he</p> <p>14 said, "Well, it looks like we have a problem because</p> <p>15 Delaware doesn't recognize deepening insolvency</p> <p>16 anymore"?</p> <p>17 MR. CASTANARES: Objection to form.</p> <p>18 THE WITNESS: I don't -- I don't recall him</p> <p>19 using that terminology, nor do I recall him -- you know,</p> <p>20 his conversation being characterized that way. He</p> <p>21 indicated that there was a ruling that had come down,</p> <p>22 dealing with deepening insolvency, and did I want to</p> <p>23 look at it. And I said yes. Because I -- I also</p> <p>24 indicated to him that I become aware of that case from</p> <p>25 another source.</p>	<p style="text-align: right;">Page 29</p> <p>1 information as well.</p> <p>2 And, finally, there was also a -- an</p> <p>3 internal Oakwood Homes document that was a set of</p> <p>4 projections for fiscal years '01 and '02 that OHC did.</p> <p>5 My recollection is that was September 25th, 2001.</p> <p>6 Q. And was that one of the sources for the</p> <p>7 information on pages 14 to 18?</p> <p>8 A. Yes.</p> <p>9 Q. Which information comes from that?</p> <p>10 A. I don't recall specifically. I think it was the</p> <p>11 securitization information on page 15 and the</p> <p>12 delinquency repossession and assumption information on</p> <p>13 page 16. At least some of the information on page 15</p> <p>14 and 16 came from that document.</p> <p>15 Q. So all of the basic information describing</p> <p>16 Oakwood comes from CSFB information plus one set of</p> <p>17 financial projections about Oakwood; is that right?</p> <p>18 A. Plus the name of the firm, brokerage -- outside</p> <p>19 brokerage firm will come to me. But it was a report on</p> <p>20 Oakwood that was not done by CS First Boston, but I</p> <p>21 think it had a CS First Boston Bates stamp on it when I</p> <p>22 got it.</p> <p>23 Q. Was it done by Miller Buckfire?</p> <p>24 A. No.</p> <p>25 Q. Was it done by FTI?</p>

MICHAEL TENNENBAUM, Ph.D.

9 (Pages 30 to 33)

Page 30	Page 32
<p>1 A. No. It will come to me.</p> <p>2 Q. So the fact, for example, that manufactured homes</p> <p>3 were manufactured in single sections 14 or 16 feet wide</p> <p>4 and 40 to 80 feet long, that comes from the CSFB</p> <p>5 documents?</p> <p>6 A. Yes, basically.</p> <p>7 Q. Do you remember which document?</p> <p>8 A. It would have been one of the presentations that</p> <p>9 CSFB did to the -- to the board of directors of -- of</p> <p>10 Oakwood.</p> <p>11 Q. Now, look if you will at page 20.</p> <p>12 A. (Complies).</p> <p>13 Q. You have some discussion there of something</p> <p>14 called five-year plan projections, which are then laid</p> <p>15 out through page 28; right?</p> <p>16 A. (No response).</p> <p>17 Q. Is that right?</p> <p>18 A. Yes.</p> <p>19 Q. So it was page 20 and the top of 21, describes</p> <p>20 the five-year plan projections, and the next pages 22</p> <p>21 through 28 are those projections that are discussed?</p> <p>22 A. Yes.</p> <p>23 Q. Where did you get those projections?</p> <p>24 A. Again, from the Stutman firm.</p> <p>25 Q. Who was the author of those projections?</p>	<p>1 Oakwood had been working on prior to the filing, but it</p> <p>2 went into a lot more detail.</p> <p>3 Q. How do you know what it's based on?</p> <p>4 A. From Mr. Muir.</p> <p>5 Q. All right. So did you -- you discussed these</p> <p>6 projections with Mr. Muir?</p> <p>7 A. Yes.</p> <p>8 Q. Right. Your report says on page 20 that "The</p> <p>9 projections entitled 'Oakwood Homes five-year plan' are</p> <p>10 based on projections developed in connection with the</p> <p>11 proposed plan of reorganization for OHC"; right?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know when the plan of reorganization was</p> <p>14 confirmed?</p> <p>15 A. Sometime in 2003, I believe.</p> <p>16 Q. Are you sure?</p> <p>17 A. I don't know for sure.</p> <p>18 Q. All right. Wouldn't you then understand that, if</p> <p>19 these were projections developed in connection with the</p> <p>20 proposed plan of reorganization, they were developed</p> <p>21 sometime around the time that plan of reorganization was</p> <p>22 filed?</p> <p>23 A. There were a number of projections that led up to</p> <p>24 the proposed plan and, as indicated from Mr. Muir, these</p> <p>25 things had been ongoing for some period of time prior to</p>
Page 31	Page 33
<p>1 A. I'm not 100 percent sure. I believe it was</p> <p>2 Miller Buckfire.</p> <p>3 Q. Who is Miller Buckfire?</p> <p>4 A. They are a firm that specializes in re-</p> <p>5 organizations, financial analyses with respect to</p> <p>6 reorganization.</p> <p>7 Q. Did they play some role in the Oakwood matter, to</p> <p>8 your knowledge?</p> <p>9 A. It's my understanding that they were consultants</p> <p>10 to Oakwood in the Chapter 11 case.</p> <p>11 Q. Okay. Is it correct to say that your basic</p> <p>12 analysis about solvency of Oakwood takes as its starting</p> <p>13 point this set of five-year projections?</p> <p>14 A. Yes.</p> <p>15 Q. This is the basic data on which you worked?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay.</p> <p>18 A. As far as the cash flows are concerned.</p> <p>19 Q. As far as the cash flows are concerned.</p> <p>20 Do you know when this five-year plan was</p> <p>21 prepared?</p> <p>22 A. It was prepared subsequent to the filing.</p> <p>23 Q. Do you know how much subsequent?</p> <p>24 A. It was completed, I think, several months after</p> <p>25 the filing. It was based on some internal analyses that</p>	<p>1 filing. So my view of these projections is that these</p> <p>2 are the kinds of projections that would have been</p> <p>3 available to a knowledgeable investor around the time of</p> <p>4 the filing, prior to the filing.</p> <p>5 MR. WICKES: I'm sorry. Could I have that</p> <p>6 read back.</p> <p>7 THE REPORTER: Yes.</p> <p>8 (Record read)</p> <p>9 BY MR. WICKES:</p> <p>10 Q. How would these projections have been available</p> <p>11 to a knowledgeable investor?</p> <p>12 A. Given that the projections were in process prior</p> <p>13 to the filing for Chapter 11, somebody who wanted to</p> <p>14 analyze the prospects of the company going forward from</p> <p>15 fall of 2002 could have generated these kinds of --</p> <p>16 these kinds of projections, if not precisely these</p> <p>17 projections, pretty close to it. So that these</p> <p>18 projections are the analyses that would underlie</p> <p>19 valuation of the assets as of late 2001 -- I'm sorry --</p> <p>20 late 2002.</p> <p>21 Q. In fact, in doing your work you've seen lots and</p> <p>22 lots and lots and lots of projections about Oakwood,</p> <p>23 haven't you?</p> <p>24 A. Yes.</p> <p>25 Q. What led you to choose this particular set as the</p>

MICHAEL TENNENBAUM, Ph.D.

10 (Pages 34 to 37)

Page 34	Page 36
<p>1 basis of your analysis?</p> <p>2 A. This set of projections deals with Oakwood on a</p> <p>3 scale-down basis where it has essentially reduced the</p> <p>4 financial services income flow in prospect dramatically</p> <p>5 from what was the case while it was heavily engaged in</p> <p>6 securitizations. So these are the kinds of projections</p> <p>7 that would underlie the going-forward operations of</p> <p>8 Oakwood in prospect, as of fall 2002.</p> <p>9 Knowing that you are going to have to cut</p> <p>10 back on securitizations, you are going to cut back on</p> <p>11 loan-to-value ratios, you are going to be much more</p> <p>12 careful with respect to your customers, and you are</p> <p>13 going to cut back on manufacturing plants, consistent</p> <p>14 with the rationalization plan that had been under</p> <p>15 consideration for quite sometime.</p> <p>16 Q. So these are projections with respect to an</p> <p>17 Oakwood group of companies, rather different in shape</p> <p>18 and business from Oakwood as it actually existed in the</p> <p>19 summer of 2002; is that correct?</p> <p>20 A. It is -- no. It is a set of projections for an</p> <p>21 Oakwood that on a going-forward basis whose revenue</p> <p>22 stream would be below what it had been during the late</p> <p>23 1990s, when it was actively involved in a lot of</p> <p>24 securitizations and would reflect a cutback in the</p> <p>25 securitization aspect of its business.</p>	<p>1 Q. So instead of saying: We'll make you the loan,</p> <p>2 they'd say: Here's our friend at XYZ Company that you</p> <p>3 can talk to about a loan?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Did you compare the numbers in the</p> <p>6 five-year plan forecast that's included in your report</p> <p>7 with contemporaneous projections that were done in the</p> <p>8 summer of 2002 or thereabouts?</p> <p>9 A. I did, yes.</p> <p>10 Q. So could you tell me, for example, how the net</p> <p>11 sales figure on page 22, the top line, how that number</p> <p>12 would have compared to other internal cash flow</p> <p>13 forecasts at the company at the time, that is, in the</p> <p>14 summer of 2002?</p> <p>15 A. They would be lower because the company would not</p> <p>16 be making sales on as high loan-to-value ratio basis as</p> <p>17 it had been in the past. So there will be fewer</p> <p>18 qualified buyers, less in the way of manufacturing. So</p> <p>19 net sales would be rather consistently lower than other</p> <p>20 projections which preceded this.</p> <p>21 Q. Okay. Are you familiar with the provisions of</p> <p>22 the plan of reorganization of Oakwood Homes that was</p> <p>23 actually confirmed in this case?</p> <p>24 A. Only very vaguely.</p> <p>25 Q. Do you know whether in connection with a plan of</p>
Page 35	Page 37
<p>1 Q. And it would reflect a number of other</p> <p>2 differences from the company as it actually existed in</p> <p>3 the summer of 2002. For example, it assumes, doesn't</p> <p>4 it, a significant reduction in the number of retail</p> <p>5 sales centers?</p> <p>6 A. It does.</p> <p>7 Q. And it assumes, for example, a significant</p> <p>8 reduction in manufacturing capacity?</p> <p>9 A. Yes. It's all part of the rationalizations</p> <p>10 process that I referred to.</p> <p>11 Q. What do you mean by "the rationalization</p> <p>12 process"?</p> <p>13 A. That's what the company was calling it in</p> <p>14 internally. It was a series of steps which the company</p> <p>15 was considering and was looking at going forward with,</p> <p>16 which would reduce the number of manufacturing plants,</p> <p>17 reduce the number of retail sales operations, exit</p> <p>18 states where there had been a lot of foreclosure</p> <p>19 problems, and cut back on securitizations.</p> <p>20 Q. And the way in which they were going to be able</p> <p>21 to cut down on securitizations, essentially, was that</p> <p>22 they were going to go out of the business of providing</p> <p>23 retail financing for the customers and let other third</p> <p>24 parties do that; isn't that right?</p> <p>25 A. Largely, yes.</p>	<p>1 reorganization the company was sold?</p> <p>2 A. That's my understanding.</p> <p>3 Q. It was sold to Clayton Homes; is that right?</p> <p>4 A. That's my understanding.</p> <p>5 Q. And are you familiar with the fact that prior to</p> <p>6 the agreement to sell the company to Clayton Homes there</p> <p>7 was a so-called stand-alone plan of reorganization</p> <p>8 proposed?</p> <p>9 A. I don't recall.</p> <p>10 Q. These forecasts that we're looking at here</p> <p>11 starting at page 22, these are forecasts that assume</p> <p>12 that Oakwood continues as an independent entity, but on</p> <p>13 the reduced scale that you've described; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 THE REPORTER: Excuse me, Counsel. When you</p> <p>17 have a moment, I could use a short break.</p> <p>18 MR. WICKES: I'd be happy to take a break</p> <p>19 right now.</p> <p>20 THE REPORTER: Thank you.</p> <p>21 THE VIDEOGRAPHER: Okay. One second,</p> <p>22 please. Going off the record, the time is 10:39.</p> <p>23 (Recess)</p> <p>24 THE VIDEOGRAPHER: We're back on the record.</p> <p>25 The time is 10:52.</p>

MICHAEL TENNENBAUM, Ph.D.

11 (Pages 38 to 41)

Page 38	Page 40
<p>1 BY MR. WICKES:</p> <p>2 Q. Doctor, before we took our break, we were talking</p> <p>3 about the five-year plan projections that start on page</p> <p>4 20 of your report, just to summarize where we are.</p> <p>5 These projections were prepared by someone</p> <p>6 at the Miller Buckfire firm; right?</p> <p>7 A. I believe so.</p> <p>8 Q. Do you know who?</p> <p>9 A. No.</p> <p>10 Q. Did you ever talk to anyone at Miller Buckfire</p> <p>11 about them?</p> <p>12 A. No.</p> <p>13 Q. Okay. Do you know what sources they used to</p> <p>14 prepare them?</p> <p>15 A. I know part of the source was backup work that --</p> <p>16 prior work that had been done by the company.</p> <p>17 Q. And you know that from your discussions with</p> <p>18 Mr. Muir?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And you are not sure when they were</p> <p>21 prepared?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay. And they were prepared in connection with</p> <p>24 a plan of reorganization different from the one that was</p> <p>25 actually confirmed; is that right?</p>	<p>1 A. Did I say "also"?</p> <p>2 Q. Yes.</p> <p>3 A. I apologize.</p> <p>4 Q. It's all right.</p> <p>5 A. These are presentations -- these are projections</p> <p>6 that came from presentations to the board of directors</p> <p>7 of Oakwood by CS First Boston, which had at least as</p> <p>8 part of their basis prior work done by Oakwood Homes</p> <p>9 internally.</p> <p>10 Q. Now, with respect to the late 2001 projections,</p> <p>11 the text of your report doesn't tell us where those</p> <p>12 projections come from. How is it that you are able to</p> <p>13 tell me now where they came from?</p> <p>14 A. I recall where they came from as a result of</p> <p>15 doing the work. I recall the documents that I reviewed.</p> <p>16 Q. Okay. And do you know -- you say the projections</p> <p>17 were in a report prepared by CSFB. Do you know the date</p> <p>18 of that report?</p> <p>19 A. There were several that contained this. My</p> <p>20 recollection is that they were contained in</p> <p>21 presentations to the board in late 2002.</p> <p>22 Q. And do you know who the author is of these</p> <p>23 projections?</p> <p>24 A. I don't.</p> <p>25 Q. Do you know whether they represent independent</p>
Page 39	Page 41
<p>1 A. I don't know that to be a fact.</p> <p>2 Q. Well, you know that the plan of reorganization</p> <p>3 that was confirmed involved a sale of the company to</p> <p>4 Clayton Homes; right?</p> <p>5 A. That's my understanding.</p> <p>6 Q. And these projections are for a stand-alone</p> <p>7 company?</p> <p>8 A. Which may have been information that Clayton used</p> <p>9 to formulate its offer price. I don't know.</p> <p>10 Q. But these are not -- these numbers don't assume a</p> <p>11 combination with Clayton homes?</p> <p>12 A. Oh, no, they don't, that's correct.</p> <p>13 Q. And your conclusion about the value of the</p> <p>14 company as of September of 2002 is based on using the</p> <p>15 methodology you disclosed, you describe, later in your</p> <p>16 report to this set of numbers in this so-called</p> <p>17 five-year plan?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And if you go to page 29, there's</p> <p>20 something called "late 2001 projections." Where do</p> <p>21 these projections come from?</p> <p>22 A. These are also projections that were contained in</p> <p>23 various presentations from or done by CS First Boston.</p> <p>24 Q. Let me stop you. What do you mean when you say</p> <p>25 "also" in that answer?</p>	<p>1 work of CSFB as opposed to just taking information from</p> <p>2 the company and including it in the report?</p> <p>3 A. I don't know.</p> <p>4 Q. Okay. Did you talk about that question with</p> <p>5 Mr. Muir?</p> <p>6 A. I did.</p> <p>7 Q. And what did he tell you?</p> <p>8 A. He indicated that these were projections that</p> <p>9 were presented to the board by CS First Boston, and that</p> <p>10 they were at least in part derived from prior work done</p> <p>11 in Mr. Muir's shop at the firm, at the company.</p> <p>12 Q. Do you know whether these materials are just</p> <p>13 copies of work that Mr. Muir's shop had done as opposed</p> <p>14 to based on some work Mr. Muir had done with some</p> <p>15 independent input from CSFB?</p> <p>16 A. I don't know.</p> <p>17 Q. So you have no idea with respect to the</p> <p>18 projections shown on page 30 how much of those</p> <p>19 projections represent work done by CSFB and how much</p> <p>20 represents work done by the company?</p> <p>21 A. Correct.</p> <p>22 Q. And with respect to the mid-2001 projections,</p> <p>23 same question. Do you know who the author of those</p> <p>24 projections is?</p> <p>25 A. These were also contained in a document that was</p>

MICHAEL TENNENBAUM, Ph.D.

12 (Pages 42 to 45)

Page 42	Page 44
<p>1 a -- I can't recall whether it was a presentation to the 2 board or was a -- some other CS First Boston document 3 that I reviewed and obtained from the Stutman firm. 4 Q. Okay. And is it similarly true with respect to 5 the projection shown on page 32 that you don't know 6 whether that represents work product of the company or 7 CSFB? 8 A. I don't know precisely. I do know that the 9 document that -- of which these projections are a part 10 is self-described as a CSFB DCF. 11 Q. That's what's described in the document? 12 A. Yes. 13 Q. That's the CSFB document dated March 2002? 14 A. Yes. 15 Q. "Containing aggressive projections and analyses 16 as of July 2001." 17 What do you mean by the word "aggressive" in 18 that sentence? 19 A. Aggressive in that the projections are what are 20 known in the valuation trade as "hockey stick 21 projections," showing initial -- after an initial 22 decrease in revenues, a strong and continuous rapid 23 increase thereafter, so that by 2005 the projected 24 revenues are greater than the company had ever done 25 before.</p>	<p>1 projections for 2001. 2 Q. Okay. And each of those analyses came to a 3 conclusion that the value in September of 2001 was 4 around \$350 million? 5 A. Yes. 6 Q. And your conclusion about the value in September 7 2002 was that the value was about \$300 million? 8 A. Or less, yes. 9 Q. On page nine of your report, item No. 2, you say, 10 "The enterprise value of OHC as of September 2002 was 11 300 million in rounded terms"; right? 12 A. Yes. 13 Q. Is that your opinion? 14 A. It is, but I want to indicate that it is at most 15 300 million, yeah. 16 Q. Why didn't you say that in your report? 17 A. I think the report does indicate that part of the 18 300 million is attribution of approximately 50 million 19 or so to excess assets, and I was quite generous in 20 valuing the excess assets. 21 Q. The first item in your report on page nine says, 22 "The enterprise value of the corporation fiscal year 23 2001 was 350 million in rounded terms." Is that your 24 opinion? 25 A. Yes, given the projections that I utilized,</p>
Page 43	Page 45
<p>1 And similarly, its EBITDA numbers by 2005 2 are at or above the most successful year that the 3 company had ever had. So they could be viewed given the 4 context of the circumstances of the company and the 5 industry in the early part of the this Century as being 6 quite aggressive. 7 (Mr. Holt entered the room.) 8 BY MR. WICKES: 9 Q. You say in that same sentence on Page 31, "The 10 projections, the analyses appear to presume a 11 substantial industry recovery in growing revenues which 12 include financial service revenues." 13 Is that what you mean by "aggressive"? 14 A. Yes. 15 Q. Now, you arrived at your valuation for 16 September 2002 by applying the techniques described 17 later in your report to the five-year plan cash flows; 18 is that right? 19 A. Yes. 20 Q. And you reach your conclusion about the value in 21 September 2001 by using those same techniques and 22 applying them to which set of projections? 23 A. Both the mid and late 2001 projections. They 24 don't differ all that much in terms of implications for 25 value. But I applied a DCF analysis to both sets of</p>	<p>1 correct. 2 Q. I don't understand that qualification. 3 Is it your opinion or not that the 4 enterprise value of the company was \$350 million in 5 September of 2001? 6 A. It is. 7 Q. It is your opinion? 8 A. Yes. 9 Q. Okay. What would the enterprise value of the 10 company have been at September of 2002 if the company 11 had gone into bankruptcy in September of 2001? 12 A. If the company had gone into bankruptcy in 2001, 13 I don't know that there would be a valuation issue as of 14 September 2002. 15 If my analyses, if my valuation conclusions 16 are correct, then the company would have been able to 17 realize \$350 million from sale of its assets as of late 18 2001 and could have distributed that to creditors. 19 Q. So am I correct to understand that your analysis 20 tells us that had the company gone into bankruptcy 21 proceedings in September of 2001, and immediately 22 proceeded to liquidate the business, that there should 23 have been at the end of the day \$350 million available 24 for distribution to creditors? 25 A. They're -- yes. They're exclusive of fees and</p>

MICHAEL TENNENBAUM, Ph.D.

13 (Pages 46 to 49)

Page 46	Page 48
<p>1 bankruptcy charges and the like, but the value of the 2 assets, the gross value of the assets that could have 3 been realized would have been \$350 million. 4 Q. Well, do I understand correctly that in both your 5 valuations as of 2001 and 2002, that you have valued the 6 company on a going-concern basis? 7 A. Yes. 8 Q. So you've assumed in both cases that the company 9 would continue to operate along the lines reflected in 10 the various projections? 11 A. That it could have. It could have sold or it 12 could have sold itself to a buyer on the basis of the 13 cash flows in prospect as of late 2001 and have realized 14 from that sale \$350 million in gross value. 15 Q. And in expressing that opinion, did you make any 16 attempt to determine whether -- whether in September of 17 2001 there were any likely buyers for Oakwood at that 18 price? 19 A. That's what a valuation exercise does, is it 20 attempts to look at if you offer this -- these assets to 21 the marketplace and walk in the foot steps of a 22 knowledgeable buyer, what kind of rate of return would 23 that knowledgeable buyer have demanded; and given that 24 rate of return, what does that imply for the present 25 value of the cash flows that are in prospect for</p>	<p>1 Q. No. Any transaction that's actually a 2 transaction has a purchaser. 3 My question is with respect to the 4 valuation. Do we just assume if we've done the 5 valuation correctly someone will buy it at that price? 6 MR. CASTANARES: I object to strike the -- 7 move to strike from the question the declarative 8 sentence that began it. 9 BY MR. WICKES: 10 Q. All right. You can go ahead. 11 MR. CASTANARES: Objection to form. 12 THE WITNESS: Valuation is an exercise which 13 attempts to simulate the results of a hypothetical 14 transaction involving the asset being valued. If the 15 asset were offered on the market, what would be the 16 likely result of that offer to sell. 17 And the results of my analysis are that, 18 among other things, that in September of 2001 the likely 19 results of that offer to sell would have been 20 approximately \$350 million in realized proceeds. 21 I can't specify who the buyer would have 22 been, but given transactions in the marketplace from 23 which my discount rates are derived, that's the 24 forecast. 25 BY MR. WICKES:</p>
Page 47	Page 49
<p>1 ownership of the assets. That's exactly what valuation 2 does. It assumes this hypothetical sale. 3 Q. And it assumes a hypothetical purchaser; right? 4 A. Yes. 5 Q. And my question is, did you make any attempt in 6 connection with your work to determine whether as of 7 September of 2001, there were any likely purchasers for 8 Oakwood? 9 MR. CASTANARES: Asked and answered. 10 MR. WICKES: Asked and not answered. 11 THE WITNESS: Well, did I answer it. The 12 answer is that the valuation exercise does that. It 13 does not go out and attempt to walk in the footsteps of 14 an investment banker and ascertain whether company A, B, 15 C, or D would be a buyer. But what it does do is it 16 looks at the marketplace to see what's going on with 17 respect to transactions and required rates of return, 18 and applies those required rates of return to the cash 19 flows resulting in the expectation of \$350 million in 20 value being realized from a hypothetical sale. 21 BY MR. WICKES: 22 Q. Does the valuation exercise simply assume that at 23 the price arrived at by this methodology there must be a 24 purchaser? 25 A. Any transaction assumes a purchaser.</p>	<p>1 Q. Okay. What if in September of 2001 the company 2 had gone into bankruptcy and not either liquidated or 3 sold itself, as you've hypothesized, but went through a 4 process that lasted several years as, in fact, happened 5 when they did go bankrupt? 6 MR. CASTANARES: Objection to form. 7 MR. WICKES: I don't think there's a 8 question yet. 9 MR. CASTANARES: Excuse me. 10 MR. WICKES: It's all right. You can warn 11 him that's coming. 12 Q. If the company went into bankruptcy, and it 13 lasted for several years, as this company's bankruptcy 14 did, can you tell me what the value would have been in 15 September of 2001 under that scenario? 16 MR. CASTANARES: Objection to form. 17 THE WITNESS: Are you asking me to change 18 the date of value? 19 BY MR. WICKES: 20 Q. No. I'm asking you to keep the date of value and 21 change the assumption that I'm asking about, which is 22 the assumption of: Assume the company went bankrupt in 23 September of 2001, and that bankruptcy lasted for 24 several years? 25 A. If the cash flows, which are one of the drivers</p>

MICHAEL TENNENBAUM, Ph.D.

14 (Pages 50 to 53)

Page 50	Page 52
<p>1 of value, if the cash flows remain as I hypothesized, 2 then that driver of value tells you that the value ought 3 to remain the same. If the discount rates don't change, 4 then that driver of value tells you that the value will 5 remain the same. 6 So that in present value terms, bringing the 7 value back to September 2001, if those value drivers 8 remain unaffected by the change in your circumstances, 9 the value ought to remain \$350 million. 10 Q. Okay. Do you know how much Clayton Homes paid 11 for the company? 12 A. I don't know exactly. According to Mr. Muir, it 13 was somewhere in the 200 million to less than 14 \$300 million range. 15 Q. Now, after you present them, your sets of 16 projections in the report, you've next turned to the 17 techniques that you used to turn those projections into 18 valuations; is that right? 19 A. Yes. 20 Q. Okay. And you have sections that describe the 21 calculation of the rate of average cost of capital and 22 then something -- how do we say, the Fama French model? 23 A. Yes, named after Gene Fama and Ken French. 24 Q. Okay. And with respect to your description of 25 the process of calculating -- well, let me strike that.</p>	<p>1 of return to equity is. 2 Whereas the capital asset pricing model 3 looks at determining the required rate of return to 4 equity by focusing on the sensitivity of a company's 5 rate of return to variability in the stock market. 6 The Fama French model expands that by also 7 looking at the sensitivity of the rate of return to 8 variability in size of company and book-to-market 9 ratios. 10 So it's an expansion of the capital asset 11 pricing model that is -- it's another approach to 12 getting to the same result which utilizes more data. 13 Q. Now, on pages 33 and 34, if I understand 14 correctly, you described for us the mathematical formula 15 that's used in the capital asset pricing model and the 16 interest that go into it; right? 17 A. Yes. 18 Q. And then on page 36, you say in the second bullet 19 point on 36, "Our analyses resulted in the following 20 valuation parameters for use in the capital asset 21 pricing model as applied to Oakwood." 22 And you have two terms there that I don't 23 see in the earlier description of the formula. And I 24 just want you to tell me whether I've missed them 25 somewhere. One is the size premium. Is that somewhere</p>
Page 51	Page 53
<p>1 Why in this exercise do we need to calculate 2 a weighted average cost of capital? 3 A. That's the discount rate. 4 Q. Tell me a little more about that. 5 A. Well, the weighted average cost of capital 6 comprise, is comprised of, a weighted average of the 7 required rate of return to equity and the required rate 8 of return to debt capital. 9 And what that formulates is the market's 10 weighted required return to the cash flows from 11 ownership of the assets of the company, weighted by how 12 much of the capitalization is debt versus how much is 13 equity. 14 Q. And the discount rate you used as part of the 15 process of determining the present value of the, in 16 effect, permanent cash flows of the company; is that 17 right? 18 A. That's correct. 19 Q. Okay. And are -- is the Fama French model 20 something different from the weighted average cost of 21 capital? Is it in addition to it? How does it relate 22 to the basic weighted average calculation? 23 A. The Fama French model is a one of the techniques 24 that is utilized alongside the capital asset pricing 25 model for purposes of determining what the required rate</p>	<p>1 in your description of the formula? 2 A. It is -- it's an addition to the capital asset 3 pricing model formula, the capital asset pricing model 4 formula as a general proposition doesn't -- doesn't take 5 into account the impact of the size of -- I'm sorry. 6 (Coughing) 7 THE WITNESS: -- the impact on the size of 8 the company on required rates of return, nor does it 9 take into account the specific risk that some companies 10 would have in addition to the CAPM. 11 BY MR. WICKES: 12 Q. And in this case what accounts for your assigning 13 a three to five percent specific risk premium? 14 A. Well, if you take a look at data with respect to 15 this industry, you find a number of things. One of 16 which is that what is known as Jensen's alpha is 17 negative for the company going back five years -- for 18 the industry going back five years. 19 What that means is that the capital asset 20 price model has overstated rates -- realized rates of 21 return for this industry going back five years from 22 2002. Which is another way of saying that in order to 23 get the correct required rate of return to equity, you 24 need to compensate for that. So you need to add a 25 required rate of return because capital asset pricing</p>

MICHAEL TENNENBAUM, Ph.D.

15 (Pages 54 to 57)

Page 54	Page 56
<p>1 model does not capture everything that goes on in the 2 determination of required rate of return. So this 3 Jensen's alpha is one aspect.</p> <p>4 The second element that goes into 5 determination of the specific risk premium is obtained 6 from looking at the Fama French -- the implications of 7 Fama French model. The Fama French model implies for 8 this industry the additional rate of return that would 9 be necessary for taking account of the riskiness of -- 10 the specific riskiness of this industry, and even more 11 so Oakwood being riskier than most of the firms in the 12 industry because of the fact that it was in very deep 13 trouble at the time. And that the projections assumed a 14 quick turnaround, which, of course, adds to the risk of 15 the buyer.</p> <p>16 You need to account for the -- what Fama 17 French called the HML variable, and that is the 18 relationship between high book value relative to market. 19 The industry -- the marketplace doesn't pay much for 20 going concern value for firms in this industry as of the 21 early part of this century. So that the HML variable 22 from the Fama French model implies an additional 23 specific risk premium of about three to five percent -- 24 of about 3.5 percent. So there's another indicator. 25 And then a further indicator of a specific</p>	<p>1 at places that say whatever the size premium -- whatever 2 the specific risk premium ought to be, it's somewhere in 3 this range.</p> <p>4 Q. All right. So we started with our projections, 5 and we now have the description of the weighted average 6 cost of capital and the Fama French model. And did 7 you, as a mechanical matter, do the capital asset 8 pricing model and the Fama French model inputs that 9 you've described between pages 33 and 37, get applied to 10 both of those different valuations in the same way? I 11 mean to the different cash flows?</p> <p>12 A. They do.</p> <p>13 Q. So you have two different sets of cash flows, and 14 then you have --</p> <p>15 A. Three, actually.</p> <p>16 Q. Three.</p> <p>17 A. Yes.</p> <p>18 Q. Although two of them you say worked out to about 19 the same?</p> <p>20 A. Yes.</p> <p>21 Q. Right. So we have a 2001 set and a 2002 set?</p> <p>22 A. Yes.</p> <p>23 Q. And you apply these inputs to them in the same 24 way?</p> <p>25 A. Yes.</p>
Page 55	Page 57
<p>1 risk premium is obtained by looking at the data from 2 Ibbotson, which is one of the foremost data providers in 3 this industry with respect to required rates of return, 4 capital asset pricing model calculations, and weighted 5 average cost of capital by industry and by firm. And 6 the Ibbotson valuation model utilizes a specific risk 7 for this industry of 5.07 percent as an additional 8 factor.</p> <p>9 All of those taken together led me to 10 believe that a reasonable estimate of a premium for 11 specific risk for this firm would be in the three to 12 five percent range.</p> <p>13 Q. And are the -- based on what you just said, is it 14 fair of me to understand that both the size premium and 15 the specific risk premium, and determination of those 16 values, involved your making a judgment informed by the 17 kind of data you've just described?</p> <p>18 A. An informed judgment, yes, based on the available 19 data.</p> <p>20 Q. Right, that's what I said.</p> <p>21 A. Yes.</p> <p>22 Q. Yes. There isn't someplace you go look up and 23 say what's the size premium. You have to look at a lot 24 of data and make a judgment?</p> <p>25 A. Yes, you have to look at a lot of data and look</p>	<p>1 Q. Okay. Is it your judgment that it's correct as a 2 matter of valuation to apply those same inputs for the 3 Fama French model and the capital asset pricing model, 4 even though the cash flows that underlie them reflect 5 very different companies?</p> <p>6 MR. CASTANARES: Objection to form.</p> <p>7 THE WITNESS: Yes. Yes, because those -- 8 the derivation of those premiums are industry wide, so 9 that for circumstances like the one in which Oakwood 10 finds itself in the troubled industry with a hoped-for 11 turnaround to various degrees, it should be applied 12 regardless of whether you are talking about September 13 '01 or September '02.</p> <p>14 BY MR. WICKES:</p> <p>15 Q. And that's true, for example, regardless of 16 whether the company remains in or goes out of the 17 financing part of the business?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Can we talk a bit about the notion that's 20 described starting on page 45 in your report?</p> <p>21 A. I'm sorry. Both Mr. Castanares and I were 22 coughing, and I didn't catch the page.</p> <p>23 Q. I'm sorry, although I wasn't coughing.</p> <p>24 If we look at page 45, we start to talk 25 about equity as a call option. Can you just tell me in</p>

MICHAEL TENNENBAUM, Ph.D.

16 (Pages 58 to 61)

Page 58	Page 60
<p>1 kind of in layman's terms what does that mean to say 2 that equity is a call option? 3 A. What it means is that as an equity owner, what 4 you have is an option on future value after you pay off 5 the debt obligations. 6 So if you have a situation in which equity 7 as of this particular point in time is valued on the 8 marketplace at a dollar a share, but there is some 9 high -- some reasonably high probability that the value 10 of the assets of the company will fluctuate dramatically 11 over time, so that before the debt obligations come due 12 there's some likelihood that asset value will exceed the 13 debt obligations by substantial amount, buyers are 14 willing to pay for that. 15 On the other hand, as the time period 16 between the date of your value inspection and the due 17 date of the obligations, as that shrinks, buyer are 18 going to be willing to pay less, because you have less 19 of an opportunity for the -- for the home run to be hit. 20 Q. Okay. Let me see if I understand it, and you 21 correct me. As an ordinary matter, we think that all 22 debt gets paid before equity gets paid. Fair enough? 23 A. Yes. 24 Q. And in a situation where it seems unlikely that 25 all the debts will be paid, we might given the first</p>	<p>1 our asset values in this industry and for Oakwood, 2 therefore, include how long of a timeframe do you have 3 If you have to turnaround within the next six months, 4 that equity is worthless. If you have five or 5 six years, you may have a value depending on how 6 variable the assets are likely to be, and it depends on 7 interest rates because there's a time value of money 8 issue. 9 So given those -- given those parameters, 10 you can determine, utilizing a variety of models, the 11 most -- by far the most popular of which is the black 12 scholes model, you can utilize a variety of models like 13 black scholes to determine, well, what's a reasonable 14 bet. 15 Q. As a general matter in your valuation work, are 16 you a believer in efficient markets? 17 A. I'm a believer in relatively efficient markets, 18 yes. 19 Q. Relative to what? 20 A. Relative to full information models. In other 21 words, I'm a believer that in markets in which there are 22 a lot of transactions and, therefore, a lot of 23 transparency, a lot of information available, that the 24 market is an excellent meter for accumulation of that 25 data in determining the value implications.</p>
Page 59	Page 61
<p>1 assumption assume that the equity was worth zero; right? 2 A. Yes. 3 Q. But, I think, if I understand what you are saying 4 here about the call option, it reflects, if you will, an 5 opinion by some buyers that actually there's a chance 6 that the debt will get paid and there will be something 7 left for equity? 8 A. Yes. 9 Q. Okay. And this, in the case of Oakwood, its 10 stock was publicly traded; right? 11 A. Correct. 12 Q. On the New York Stock Exchange, was it? 13 A. Yes. 14 Q. And what do we think as economists about the 15 price of the equity in this situation? Does it reflect 16 the market's judgment about the likelihood that there 17 will be some value for equity? 18 A. It reflects the willingness of speculative 19 purchasers to take a gamble on the prospect of a turn- 20 around in this industry sufficient -- and a turnaround 21 for the company, sufficient to allow it to pay off the 22 debt obligations, and to have, therefore, a value left 23 over for equity. 24 And the parameters for considering whether 25 that's a reasonable bet or not include how variable are</p>	<p>1 It isn't always true that that information 2 is transparent. It isn't always true that both sides of 3 the market have similar information. You know, a 4 classic example being the current mess in the mortgage 5 markets, in mortgage securities and SIVs, things along 6 those lines where there is some lack of transparency 7 and, therefore, widespread differences of opinion as to 8 values. 9 So where there is a lot of information, 10 markets utilize that information efficiently. 11 Q. Okay. So in this situation, for example, where 12 the equity shares of the company are being traded on the 13 New York Stock Exchange, would we assume that buyers and 14 sellers of those shares have the same information 15 available to them? 16 A. Pretty much. 17 Q. So would we assume that the price of the equity 18 then would represent the workings of a relatively 19 efficient market? 20 A. Assuming that there are a lot of transactions 21 involved, yes. 22 Q. Okay. How do you measure a lot of transactions? 23 A. Frequency of transactions, volume of transactions 24 relative to the outstanding number of shares available. 25 Q. And does the -- do I understand from the</p>

MICHAEL TENNENBAUM, Ph.D.

17 (Pages 62 to 65)

Page 62	Page 64
<p>1 discussions starting at page 48 in your report that it's</p> <p>2 possible to take the information about the value of</p> <p>3 equity in this circumstance and deduce from that some</p> <p>4 information about the likelihoods of default?</p> <p>5 A. Yes. So that -- so that -- on the top of page</p> <p>6 50, for example, in the first bullet point, you say,</p> <p>7 "For OHC the foregoing inputs imply an increase in</p> <p>8 default probability from September '01 to September</p> <p>9 '02." And you say that "The default probability of</p> <p>10 September '01 was 62.3 percent, and then a year later it</p> <p>11 was 96.9 percent."</p> <p>12 Q. Can you just walk me through, remembering having</p> <p>13 a little mercy on somebody who is a history major and</p> <p>14 not a math major, how it is from this data we conclude</p> <p>15 something about the default probability?</p> <p>16 A. Well, the default probability is indicated at the</p> <p>17 bottom of page 49.</p> <p>18 Q. Okay.</p> <p>19 A. As being one minus ND2. ND2 is a probability</p> <p>20 distribution. It's a likelihood of a -- for a normal</p> <p>21 distribution, it's the likelihood of values being equal</p> <p>22 to or less than certain amounts here. Where D1 and D2</p> <p>23 are functions of the relative size of the asset price</p> <p>24 and the -- on the one hand, and the debt on the other,</p> <p>25 and the times of to maturity.</p>	<p>1 flows.</p> <p>2 Q. Do you want to take a break?</p> <p>3 A. Could I have one minute to get a cup of coffee</p> <p>4 while it's hot?</p> <p>5 Q. The rule is, if we take a break, it has to be at</p> <p>6 least five minutes so I can go down and take a</p> <p>7 cigarette.</p> <p>8 A. I'll wait.</p> <p>9 Q. I'm happy to have a break.</p> <p>10 THE VIDEOGRAPHER: Going off the record, the</p> <p>11 time is 11:38.</p> <p>12 (Brief pause)</p> <p>13 THE VIDEOGRAPHER: We're back on the record.</p> <p>14 The time is 11:43. This marks the end of videotape</p> <p>15 No. 1 in the deposition of Dr. Michael Tennenbaum.</p> <p>16 Going off the record, the time is 11:43.</p> <p>17 (Recess)</p> <p>18 THE VIDEOGRAPHER: We're back on the record.</p> <p>19 Here begins videotape No. 2 in the deposition of</p> <p>20 Dr. Michael Tennenbaum. The time is 11:53.</p> <p>21 BY MR. WICKES:</p> <p>22 Q. Doctor, on page 48 and 49 you do the calculations</p> <p>23 for valuation of OHC equity as of September 2001 and</p> <p>24 2002, utilizing the black scholes model.</p> <p>25 On page 49 at the top, you have a number for</p>
Page 63	Page 65
<p>1 So given those calculations ND2 is the</p> <p>2 probability of the assets eventually becoming worth more</p> <p>3 than the debt on or before the due date of the debt.</p> <p>4 And so one minus ND2 is, therefore, by definition, of</p> <p>5 the -- the probability that the assets don't reach the</p> <p>6 size of debt and, therefore, you default.</p> <p>7 Q. So --</p> <p>8 A. But I do want to condition that whole series of</p> <p>9 statements on the presumption that you are willing to</p> <p>10 accept -- as of September '01 you are willing to accept</p> <p>11 the projections as being -- the cash flow projections as</p> <p>12 being the most likely set of projections.</p> <p>13 If those projections are considered</p> <p>14 aggressive, as I considered them in the report, then the</p> <p>15 probability of default will go up from what is stated</p> <p>16 here. So that these probabilities of default</p> <p>17 are -- are as high as they are even with aggressive</p> <p>18 projections.</p> <p>19 If you make projections that are somewhat</p> <p>20 less aggressive as the company did, you are going to get</p> <p>21 a default probability that is substantially in excess of</p> <p>22 62 percent and is well in excess of 80 percent for --</p> <p>23 I'm sorry -- for September '01. So that the</p> <p>24 62.3 percent default probability is a default</p> <p>25 probability given the acceptance of aggressive cash</p>	<p>1 equity value. What is the source of that equity value?</p> <p>2 A. Well, it's -- it's the resulting -- it's a result</p> <p>3 of the calculation of the call value. It -- what it is</p> <p>4 is, when you utilize the inputs described on page 48</p> <p>5 with respect to the enterprise value, the face value of</p> <p>6 the debt, the weighted average debt duration, standard</p> <p>7 deviation in enterprises value and the risk-free</p> <p>8 interest rate, and you plug those numbers into the basic</p> <p>9 black scholes equation identified at the middle of page</p> <p>10 46 and the additional values below that, you wind up</p> <p>11 with the calculation of equity value of \$25.8 million as</p> <p>12 of September '01.</p> <p>13 Q. Do you know how that number compares to the</p> <p>14 number we would find if we multiplied the number of</p> <p>15 outstanding equity shares of the company by its price as</p> <p>16 of September 30, 2001?</p> <p>17 A. Well, the -- there are about nine and a half</p> <p>18 million shares outstanding, so if we divide this by nine</p> <p>19 and a half, you are going to -- by 9.5 million, you are</p> <p>20 going to get a couple dollars a share, two and a half</p> <p>21 dollars a share, something like that.</p> <p>22 Q. Do you know what the share price was at</p> <p>23 September 30th, 2001?</p> <p>24 A. It fluctuated over time. I think it was down</p> <p>25 around a dollar and a half or two dollars, something</p>

MICHAEL TENNENBAUM, Ph.D.

18 (Pages 66 to 69)

Page 66	Page 68
<p>1 like that.</p> <p>2 Q. And -- sorry. I've lost my train of thought.</p> <p>3 Did you make any attempt in your work to</p> <p>4 compare the -- any of the cash flow projections that you</p> <p>5 used in doing your work with projections about the</p> <p>6 company that were in the public domain at the time?</p> <p>7 A. I never saw any projections in the public domain</p> <p>8 that went out a few years, so I did not.</p> <p>9 Q. Okay. Did you, for example, compare any of the</p> <p>10 projections that you used with whatever projections for</p> <p>11 whatever period of time were being published by various</p> <p>12 equity analysts who covered the Oakwood stock?</p> <p>13 A. Again, all of the equity analyst reports that I</p> <p>14 saw either had no specific projections or there were</p> <p>15 projections for a very short period of time. I never</p> <p>16 saw any endless projections that ran out a couple of</p> <p>17 years or certainly not five, six years.</p> <p>18 Q. Okay. Maybe you can help me. Somewhere in this</p> <p>19 report you say that you think the value of the B2</p> <p>20 guaranties increased from 100 million in 2001 to 144</p> <p>21 million in 2002. Do you know where that appears?</p> <p>22 A. Yes. It would be a comparison of -- I'll find</p> <p>23 the pages in a moment. It would be a comparison of page</p> <p>24 41 and 39.</p> <p>25 Q. Okay. On page 39 you say the value of the B2</p>	<p>1 A. Thirty some odd million dollars, 36 million, I</p> <p>2 believe.</p> <p>3 Q. And those were there are audited financial</p> <p>4 statements audited by Price Waterhouse Coopers?</p> <p>5 A. Yes, on bases that are different from what is --</p> <p>6 what results from the projections that I utilized.</p> <p>7 Because what you have to take account of is</p> <p>8 the fact that in order to get to these aggressive</p> <p>9 projections, you have to assume that the servicing fee</p> <p>10 that OAC had, the fee that it was going to be able to</p> <p>11 charge for servicing the outstanding mortgages, instead</p> <p>12 of being at the bottom of the waterfall was going to go</p> <p>13 to the top of the waterfall. And they were going to get</p> <p>14 a -- they were going to get a market rate of about</p> <p>15 one percent.</p> <p>16 Which means -- which would have the further</p> <p>17 implication that since they're getting paid earlier, the</p> <p>18 B2s are going to be paid later, and some of them are not</p> <p>19 going to be paid at all. And, therefore, the guaranties</p> <p>20 would kick in to a greater extent than is contained in</p> <p>21 this assumptions leading up to the financial statements.</p> <p>22 So, you know, they're different states of</p> <p>23 the world, as it were. So a direct comparison is it</p> <p>24 needs to take account of the fact that the assumed</p> <p>25 status of the servicing fee is different.</p>
Page 67	Page 69
<p>1 guaranties is \$144 million. What's the source of that</p> <p>2 number?</p> <p>3 A. Preliminary calculations of the Davidson firm.</p> <p>4 Q. Okay.</p> <p>5 A. And -- which I saw, and those calculations were</p> <p>6 contained in CSFB presentations to the board of</p> <p>7 directors at Oakwood and, I believe, to Brookshire</p> <p>8 (phonetic).</p> <p>9 Q. And what's the source of the \$100 million number</p> <p>10 on page 41?</p> <p>11 A. The source of the \$100 million number on page 41</p> <p>12 is to take the Davidson numbers and delete the</p> <p>13 securitizations which occurred after 2001, and reduce</p> <p>14 the resulting figures to present value by application of</p> <p>15 a 10 percent discount rate which Mr. Davidson's firm</p> <p>16 utilized.</p> <p>17 Q. That's the calculation you did?</p> <p>18 A. Yes. It actually gets you a number slightly in</p> <p>19 excess of 100 million, but I rounded it down.</p> <p>20 Q. And did you make any attempt to compare that</p> <p>21 number to what Oakwood's financial statement said the</p> <p>22 value of those guaranties was?</p> <p>23 A. Yes.</p> <p>24 Q. What -- in 2001 what did Oakwood's financial</p> <p>25 statements say the value of the guaranties were?</p>	<p>1 Q. So your \$100 million for September 2001, that</p> <p>2 assumes that the securitizations were amended in such a</p> <p>3 way that the servicing fees would have been paid at a</p> <p>4 high enough priority to always be paid; is that right?</p> <p>5 A. Yes. That's what Mr. Davidson's numbers assume.</p> <p>6 Q. And so you just took that assumption back to</p> <p>7 2001?</p> <p>8 A. Correct.</p> <p>9 Q. All right. On page 51 of your report in your</p> <p>10 conclusions, in your fourth bullet point, you say that</p> <p>11 "Continued operation of OHC business model involving</p> <p>12 securitization of loans and guarantying certain</p> <p>13 tranches of the securities had the following impacts on</p> <p>14 OHC's values."</p> <p>15 Can we just talk for a moment first in</p> <p>16 general. Let's go back before 2001, if you'd like.</p> <p>17 What was the relationship between the securitization</p> <p>18 process and Oakwood's underlying business model?</p> <p>19 A. Well, the securitization process provided the</p> <p>20 funding for Oakwood to enable it to finance the</p> <p>21 mortgages that it was financing for its customers.</p> <p>22 Q. Let me just try an example to see if I understand</p> <p>23 it. Let's suppose Oakwood has gone through the proces</p> <p>24 of manufacturing a mobile home, and they sell it to a</p> <p>25 customer at their lot for -- pick a number -- \$100,000.</p>

MICHAEL TENNENBAUM, Ph.D.

19 (Pages 70 to 73)

Page 70	Page 72
<p>1 I have no idea what a mobile home costs nowadays. It 2 will make the math easier.</p> <p>3 And let's assume that Oakwood finances that 4 purchase by the purchaser at a 90 percent loan-to-value 5 ratio. Now, all that's happened insofar as Oakwood is 6 concerned up to that point in the transaction is they 7 sold a mobile home and realized \$10,000 in cash and a 8 receivable for \$90,000; right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And if you assume that the cost of the 11 mobile home is more than -- the cost to manufacture the 12 mobile home is more than \$10,000, on a cash basis 13 they've lost money at that point; right?</p> <p>14 A. So far so good.</p> <p>15 Q. Okay. So now this is where the securitization 16 comes in; right?</p> <p>17 A. Yes.</p> <p>18 Q. Which is a way to take that \$90,000 and convert 19 some part of it into cash?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And that's the process of the quarterly 22 securitizations that have been going on for a long time?</p> <p>23 A. Yes.</p> <p>24 Q. Is it the fact of the securit- -- strike that. 25 Up to that point in my hypothetical has the</p>	<p>1 loan-to-value ratios.</p> <p>2 Q. Okay. In the last bullet point on page 51 you 3 say, "Oakwood homes suffered damages as a result of 4 continued operation of its business model in an amount 5 of at least \$50 million."</p> <p>6 Do I understand from that that you mean to 7 say that it would have been \$50 million better for the 8 company if in September of 2001 CSFB had simply refused 9 to do further securitizations and forced the end of the 10 company's business model at that point?</p> <p>11 A. Probably, yes.</p> <p>12 Q. Okay. I understand that correctly?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. In addition, you go on to say, "OHC paid 15 fees relating to the continuation of a business model 16 which was destroying value. Such fees added to the 17 damage suffered by OHC, and we were informed that the 18 fees in question are in excess of 20 million."</p> <p>19 Who informed you of that?</p> <p>20 A. Mr. Yun.</p> <p>21 Q. Mr. Yun, 22 And what fees are those?</p> <p>23 A. I'm -- fees paid to CS First Boston. I don't 24 know what the breakdown of the fees is.</p> <p>25 Q. Do you know whether the fees were actually paid</p>
Page 71	Page 73
<p>1 securitization process itself done anything to affect 2 the value of Oakwood's business?</p> <p>3 A. It depends. If it allows Oakwood to finance 4 transactions with its customers which would otherwise 5 not be viable, which would not be financeable, then what 6 it -- what that accomplishes is that it buys Oakwood 7 trouble in the future when those mortgages get defaulted 8 on.</p> <p>9 Q. Okay. When you talked to Mr. Muir, did he talk 10 to you about the problems that arose in the business 11 when, as a general matter, the industry moved from a 12 standard 90 percent loan-to-value ratio to a 95 percent 13 loan-to-value ratio?</p> <p>14 A. Yes.</p> <p>15 Q. Did he tell you that in hindsight that people 16 recognized that in that five percent difference, they 17 brought into their customer base a group of people who 18 had turned out to have rather different performance in 19 default results than the customers at the 90 percent 20 level?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Did he tell you why they went from 23 9 percent to 95 percent?</p> <p>24 A. They were trying to match the competition. There 25 was kind of an industry-wide approach, the higher</p>	<p>1 by the company or were simply reductions in the proceeds 2 of financing transactions?</p> <p>3 A. I don't know.</p> <p>4 Q. What do you think would have happened at Oakwood 5 if on September the 30th of 2001, CSFB had simply said 6 no more securitizations period, full stop?</p> <p>7 A. I think the company would have filed Chapter 11.</p> <p>8 Q. Immediately?</p> <p>9 A. I think so.</p> <p>10 Q. And then what would have happened?</p> <p>11 A. Hopefully, they would have sought to engage in an 12 orderly sale of the company on a going -- of the assets 13 on a going concern value basis, and would have been able 14 to generate in September '01 dollars \$350 million for 15 potential distribution to the creditors.</p> <p>16 Q. Was it important in what you just told me that 17 the company be able to realize that value by arranging 18 for sale of the assets on a going-concern basis?</p> <p>19 A. Sure.</p> <p>20 Q. Okay. How would the company have continue on a 21 going concern basis if it had no further ability to 22 securitize or finance the proceeds of its installment 23 sales contracts from its customers?</p> <p>24 A. There was an alternative possibility of whole -- 25 whole loan sales. They may have been able to securitize</p>

MICHAEL TENNENBAUM, Ph.D.

20 (Pages 74 to 77)

Page 74	Page 76
<p>1 to some extent to, you know, a less -- in a lesser 2 volume. And when you go out to sell the assets, you 3 sell them on the basis of, look, here's what's 4 available, that we have cash flows in prospect; if you 5 are able to obtain financing and sell the company, sell 6 the company's cash flow prospects that way. 7 Q. Okay. 8 A. Rather than, you know, liquidate assets. 9 Q. But to sell the company's cash flow prospects, 10 the company would have had to have continued in the 11 business of manufacturing and selling mobile homes? 12 A. Yes. 13 Q. Okay. And up until that time, isn't it a fact 14 that the principal source of liquidity in order to keep 15 doing that business was the securitizations? 16 A. Yes. 17 Q. Okay. And to what extent have you investigated, 18 and can you tell us, what other sources of liquidity 19 would have actually been available to the company at 20 that time? 21 A. I haven't done an analysis of that. 22 Q. Okay. So is it possible that if, in our 23 hypothesis on September 30th of 2001, Credit Suisse had 24 simply said: We're done, we're going home, that the 25 result would not only have been a Chapter 11 filing, but</p>	<p>1 for the going-concern value of the company as of that 2 point in time because of the fact that that going 3 concern value was dissipating and was going to dissipate 4 over the next -- over the foreseeable future. 5 And that does not imply anything at all 6 about what would happen if somebody forced them to 7 liquidate. That, I don't know. 8 Q. Well, let's just test the assumptions that are 9 built into that. First of all, you said you think the 10 creditors would have been better off had the company 11 been given advice in September of 2001 that they should 12 go into bankruptcy. Actually, what advice the company 13 got wouldn't have had any effect, would it? What would 14 have made a difference is if they had gotten that advice 15 and acted on it? 16 A. Yes, sure, assuming they acted on it. 17 Q. All right. So and isn't it further accurate to 18 say that your assumption that the creditors would have 19 been better off in that circumstance, assumes that in 20 that scenario, in a Chapter 11 commencing around the 21 First of October 2001, there would have been some 22 alternative source of liquidity to allow the company to 23 continue to remain a going concern? 24 A. Yes. 25 Q. And it's a fact, if I further understand your</p>
Page 75	Page 77
<p>1 would have been a very rapid cessation of the business 2 activities of the company? 3 A. Is it possible? 4 Q. Yes. 5 A. Anything is possible. 6 Q. Given that you have not investigated alternative 7 sources of financing to replace the liquidity 8 prepared -- provided by the securitizations, it's a 9 fact, isn't it, that you are not able to tell us how 10 likely it is that the results of the end of the 11 securitization process would have been the rapid 12 liquidation of the company? 13 A. If you shut off the financing completely, yeah, 14 of course. I did not investigate what would happen 15 under those circumstances. 16 Q. You didn't? 17 A. Correct. 18 Q. Other than to say that -- well, strike that. 19 Is it your opinion that -- in September of 20 2001 is it your opinion that the creditors of the 21 company would have been better off had Credit Suisse in 22 September of 2001 simply stopped the securitizations? 23 A. I don't know. What my analysis indicates is that 24 the company would have been better off had it received 25 advice to file in September of '01 and seek a purchaser</p>	<p>1 testimony, that you made no attempt to determine whether 2 any such alternative sources of liquidity would have 3 been available? 4 A. That's correct, I did no analysis of the 5 liquidity available to the company. 6 Q. Okay. And is it correct that you made no attempt 7 to estimate what values might have been recovered by the 8 company if, in fact, it had not been able to be sold as 9 a going concern, but had gone into an immediate shut 10 down and liquidation model? 11 A. That's correct. 12 Q. Okay. If the company had been able to find some 13 alternative source of liquidity in our October 1st, 14 2001, bankruptcy scenario -- strike that. That's going 15 nowhere. 16 Do you know what the recovery of unsecured 17 creditors in the case ultimately was? 18 A. I don't have any specific knowledge of that. 19 Q. Well, what have you heard? 20 A. 40 to 50 percent range. 21 Q. Okay. What was the debt trading at in September 22 of 2001? 23 A. The debt was in the -- it fluctuated between 30 24 cents on the dollar and 60 cents on the dollar. 25 MR. WICKES: That's all I have.</p>

MICHAEL TENNENBAUM, Ph.D.

21 (Pages 78 to 80)

Page 78	Page 80
<p>1 MR. CASTANARES: I have no cross.</p> <p>2 THE VIDEOGRAPHER: Conclude the depo?</p> <p>3 MR. WICKES: (Nods his head up and down).</p> <p>4 THE VIDEOGRAPHER: This concludes the</p> <p>5 deposition of Michael Tennenbaum, Volume I. The number</p> <p>6 of tapes used today was two. The original videotapes</p> <p>7 will be retained by Merrill Legal Solutions at 25 West</p> <p>8 45th Street, Suite 900, New York, New York 10039.</p> <p>9 Going off the record, the time is 12:20.</p> <p>10</p> <p>11 (Whereupon, at the hour of 12:20 p.m.,</p> <p>12 proceedings were adjourned.)</p> <p>13 -oOo-</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 State of California)</p> <p>2)</p> <p>3 County of Los Angeles)</p> <p>4</p> <p>5 I, Felipe F. Carrillo, Certified Shorthand Reporter</p> <p>6 No. 9555 for the State of California, do hereby certify:</p> <p>7 That prior to being examined, the witness named in</p> <p>8 the foregoing deposition was duly sworn to testify the</p> <p>9 truth, the whole truth, and nothing but the truth;</p> <p>10 That said deposition was taken down by me in</p> <p>11 shorthand at the time and place therein named and</p> <p>12 thereafter reduced by me to typewritten form, and that</p> <p>13 the same is a true, correct and complete transcript of</p> <p>14 said proceedings.</p> <p>15 Before completion of the deposition, review of the</p> <p>16 transcript { } was { } was not requested. If requested,</p> <p>17 and changes made by the deponent (and provided to the</p> <p>18 reporter) during the period allowed are appended hereto.</p> <p>19 I further certify that I am not interested in the</p> <p>20 outcome of the action nor a relative or employee of any</p> <p>21 attorney of any of the interested parties.</p> <p>22 Witness my hand this _____ day of _____,</p> <p>23</p> <p>24</p> <p>25 <u>FELIPE F. CARRILLO, RPR, CSR #9555</u></p>
<p>Page 79</p> <p>1 State of California)</p> <p>2)</p> <p>3 County of Los Angeles)</p> <p>4</p> <p>5</p> <p>6 I, MICHAEL TENNENBAUM, Ph.D., do hereby declare</p> <p>7 under penalty of perjury that I have read the foregoing</p> <p>8 transcript of my deposition; that I have made such</p> <p>9 corrections as noted herein, in ink, initialed by me, or</p> <p>10 attached hereto; that my testimony as contained herein,</p> <p>11 as corrected, is true and correct.</p> <p>12 Executed this _____ day of _____, 2007,</p> <p>13 at _____,</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 <u>MICHAEL TENNENBAUM, Ph.D.</u></p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

MICHAEL TENNENBAUM, Ph.D.

Page 1

A	agreement 37:6	40:3	44:20 45:17	25:2 33:3,10
ability 73:21	ahead 48:10	appear 43:10	46:2,2,20 47:1	45:23 55:18
able 25:20 35:20	al 1:4 4:8	APPEARANCES	51:11 58:10	60:23 61:15,24
40:12 45:16	alleged 14:24	2:7	60:6 63:2,5	74:4,19 77:3,5
68:10 73:13,17	allow 59:21 76:22	appeared 28:6	73:12,18 74:2,8	Avenue 2:3,11,19
73:25 74:5 75:9	allowed 80:18	appears 66:21	assigning 53:12	4:16
77:8,12	allows 71:3	appended 80:18	assignment 18:11	average 50:21
Absolutely 13:12	allude 21:10	application 67:14	assistance 16:17	51:2,5,6,20,22
accept 63:10,10	alongside 51:24	applied 43:25	16:21,22,23	55:5 56:5 65:6
acceptance 63:25	alpha 53:16 54:3	52:21 56:9	assisted 17:7	aware 27:24
access 19:15	alternative 73:24	57:11	assume 37:11	A.M 2:4 4:2
accomplishes	75:6 76:22 77:2	applies 47:18	39:10 47:22	
71:6	77:13	apply 56:23 57:2	48:4 49:22 59:1	B
account 15:16	amended 69:2	applying 43:16,22	61:13,17 68:9	B 47:14
53:5,9 54:9,16	Americas 2:19	approach 52:11	69:5 70:3,10	back 9:8,22 12:19
68:7,24	amount 23:9	71:25	assumed 46:8	24:25 25:8 33:6
accounts 53:12	58:13 72:4	approaches 26:22	54:13 68:24	34:10,10,13
accumulation	amounts 62:22	appropriate 17:4	assumes 35:3,7	35:19 37:24
60:24	analyses 10:21	approximately	47:2,3,25 69:2	50:7 53:17,18
accurate 76:17	24:21 26:21,23	44:18 48:20	76:19	53:21 64:13,18
acted 76:15,16	27:6 31:5,25	April 6:11,14	assuming 61:20	69:6,16
action 16:10	33:18 42:15	areas 23:8	76:16	background
80:20	43:10 44:2	arithmetic 27:1	assumption 29:12	21:14 24:19
actively 24:5	45:15 52:19	arose 71:10	49:21,22 59:1	backup 38:15
34:23	analysis 12:4	arrangement	69:6 76:18	ballpark 18:21
activities 75:2	13:22 14:6 15:7	22:1	assumptions	bank 25:1
add 18:3 53:24	15:8,15,19 16:7	arranging 73:17	10:23 68:21	banker 47:14
added 72:16	24:23,24 25:8	arrived 43:15	76:8	banking 1:7
addition 51:21	31:12 34:1	47:23	attach 6:19	bankrupt 49:5,22
53:2,10 72:14	43:25 45:19	ascertain 47:14	attached 7:3	bankruptcy 1:1
additional 10:8	48:17 74:21	Aside 9:3	79:10	4:9 8:23,25 14:8
19:24 54:8,22	75:23 77:4	asked 11:5 15:21	attempt 46:16	15:2 22:11,15
55:7 65:10	analyst 66:13	15:22,24 24:23	47:5,13 66:3	25:1 45:11,12
adds 54:14	analysts 66:12	24:24 25:6 47:9	67:20 77:1,6	45:20 46:1 49:2
adjourned 78:12	analyze 33:14	47:10	attempts 46:20	49:12,13,23
Adversary 1:7	Angeles 1:19 2:3	asking 49:17,20	48:13	76:12 77:14
advice 75:25	2:13 4:1,17 9:21	49:21	attend 11:6,14	base 71:17
76:11,12,14	79:3 80:3	aspect 34:25 54:3	attended 11:10,16	based 31:25 32:3
affect 15:18,23	answer 3:17	aspects 12:3	attorney 2:10,18	32:10 39:14
24:21 71:1	10:13 15:20	asset 48:14,15	8:16 80:21	41:14 55:13,18
affiliates 1:11	19:17,19 25:21	51:24 52:2,10	attribution 44:18	bases 68:5
aggressive 22:16	39:25 47:11,12	52:15,20 53:2,3	audited 68:3,4	basic 29:15 31:11
42:15,17,19	answered 47:9,10	53:19,25 55:4	author 16:15	31:15 51:22
43:6,13 63:14	anticipated 10:23	56:7 57:3 58:12	30:25 40:22	65:8
63:17,20,25	anymore 27:16	60:1 62:23	41:23	basically 30:6
68:8	apologize 20:25	assets 33:19 44:19	available 23:15	basis 34:1,3,21

MICHAEL TENNENBAUM, Ph.D.

Page 2

36:16 40:8 46:6	68:12	21:15 55:4 63:1	50:1 51:10,16	classic 61:4
46:12 70:12	Boulevard 9:21	64:22 67:3,5	56:11,13 57:4	Clayton 37:3,6
73:13,18,21	break 37:17,18	Calgary 9:23	63:11,25 66:4	39:4,8,11 50:10
74:3	38:2 64:2,5,9	California 1:19	70:7,12,19 74:4	client 13:9 14:12
Bates 28:21 29:21	breakdown 72:24	2:4,13 4:1,17	74:6,9	14:14,20 15:9
Beach 7:6,18	Brief 23:25 64:12	79:1 80:1,6	Castanares 2:10	16:7
becoming 63:2	bring 8:4	call 8:13 57:25	4:23,23 9:14,20	clients 14:5
bee 17:12	bringing 50:6	58:2 59:4 65:3	25:18 26:18	client's 13:16
began 48:8	brokerage 28:20	called 27:13	27:17 28:4 47:9	close 33:17
begins 4:5 7:21	29:18,19	30:14 39:20	48:6,11 49:6,9	coffee 64:3
64:19	Brookshire 67:7	54:17	49:16 57:6,21	COLLECTIVE...
BEHALF 2:2	brought 71:17	calling 35:13	78:1	5:23
believe 12:1 16:14	Buckfire 29:23	capacity 22:19	catch 57:22	combination
22:3 31:1 32:15	31:2,3 38:6,10	35:8	centers 35:5	39:11
38:7 55:10 67:7	built 76:9	capital 50:21 51:2	cents 77:24,24	come 13:1,20
68:2	bullet 52:18 62:6	51:5,8,21,24	century 43:5	19:12 20:3
believed 22:14	69:10 72:2	52:2,10,15,20	54:21	27:21 29:19
believer 60:16,17	business 8:2,6	53:2,3,19,25	certain 62:22	30:1 39:21
60:21	23:10 34:18,25	55:4,5 56:6,7	69:12	40:12 58:11
benefit 14:4,5	35:22 45:22	57:3	certainly 14:17	comes 28:18 29:9
best 12:2 17:21	57:17 69:11,18	capitalization	66:17	29:16 30:4
bet 59:25 60:14	71:2,10 72:4,10	51:12	Certified 80:5	70:16
better 21:23	72:15 74:11,15	CAPM 53:10	certify 80:6,19	coming 49:11
25:21 72:7	75:1	capture 54:1	cessation 75:1	commencing
75:21,24 76:10	buy 48:5	careful 34:12	chance 59:5	76:20
76:19	buyer 46:12,22	Carolina 20:5	change 49:17,21	companies 34:17
billings 18:2,3,13	46:23 47:15	21:3	50:3,8	53:9 57:5
18:14	48:21 54:15	Carrillo 1:24 2:5	changes 80:17	company 8:1 15:5
bills 18:19	58:17	5:1 80:5,25	Chapter 1:4	15:13,17 16:2
bit 57:19	buyers 36:18	carry 25:7	31:10 33:13	16:13 21:14
black 60:11,13	46:17 58:13	carrying 23:21	73:7 74:25	22:17 26:24
64:24 65:9	59:5 61:13	case 4:9 25:13,14	76:20	28:12 33:14
board 28:15 30:9	buys 71:6	25:19 26:9,13	characterized	35:2,13,14 36:2
40:6,21 41:9	B2 66:19,25	27:9,11,24 28:2	27:20	36:13,15 37:1,6
42:2 67:6	B2s 68:18	28:6 31:10 34:5	charge 68:11	38:16 39:3,7,14
body 6:12		36:23 53:12	charges 46:1	41:2,11,20 42:6
book 54:18	C	59:9 77:17	choose 33:25	42:24 43:3,4
books 21:17	C 47:15	cases 24:14,16	cigarette 64:7	45:4,10,10,12
bookshelf 24:9,11	Cal 7:6,18	25:10,23,25	circumstance	45:16,20 46:6,8
book-to-market	calculate 51:1	26:7 46:8	62:3 76:19	47:14 49:1,12
52:8	calculating 50:25	cash 10:23 11:21	circumstances	49:22 50:11
Boston 1:7,9,10	calculation 50:21	11:22 12:4 13:6	43:4 50:8 57:9	51:11,16 52:8
29:20,21 39:23	51:22 65:3,11	13:24,24 17:2,3	75:15	53:8,17 57:16
40:7 41:9 42:2	67:17	31:18,19 36:12	citations 23:19,19	58:10 59:21
72:23	calculations	43:17 46:13,25	cite 23:15	61:12 63:20
bottom 62:17	13:23 17:5	47:18 49:25	claim 14:3	65:15 66:6 72:8

MICHAEL TENNENBAUM, Ph.D.

Page 3

73:1,7,12,17,20 74:5,10,19 75:2 75:12,21,24 76:1,10,12,22 77:5,8,12 company's 27:1 49:13 52:4 72:10 74:6,9 compare 36:5 66:4,9 67:20 compared 36:12 compares 65:13 comparison 66:22 66:23 68:23 compensate 53:24 competition 71:24 competitive 23:3 competitors 22:17 complaint 14:18 14:21,23 complete 23:24 80:13 completed 31:24 completely 75:13 completion 80:15 Complies 28:10 30:12 comprise 51:6 comprised 51:6 concern 54:20 73:13,21 76:3 76:23 77:9 concerned 31:18 31:19 70:6 concerning 10:11 conclude 6:13 13:10 15:4 62:14 78:2 concluded 6:14 concludes 78:4 conclusion 15:13 16:1 39:13 43:20 44:3,6 conclusions 26:1	45:15 69:10 condition 63:8 confirmed 32:14 36:23 38:25 39:3 connection 12:13 12:17 20:8 23:24 32:10,19 36:25 38:23 47:6 consideration 34:15 considered 63:13 63:14 considering 35:15 59:24 consistent 34:13 consistently 36:19 consultants 31:9 consultation 10:14,20 13:3 consulting 7:8,16 7:19,25 22:1 contacted 8:8,12 10:1 contained 39:22 40:19,20 41:25 67:6 68:20 79:10 Containing 42:15 contemporaneo... 36:7 context 43:4 continuation 72:15 continue 46:9 73:20 76:23 continued 69:11 72:4 74:10 continues 37:12 continuous 42:22 contracted 4:13 contracts 73:23 conversation 12:6 13:9,15 14:17	14:19,22 23:11 26:10,12 27:8 27:20 conversations 14:2 23:20 convert 70:18 conveyances 14:25 16:11 Coopers 68:4 copies 41:13 copy 6:3 corporation 1:4,8 44:22 correct 5:21 7:4 8:6,7 13:19 14:9 19:22 31:11,16 34:19 38:22 39:12 41:21 45:1,16,19 51:18 53:23 57:1 58:21 59:11 69:8 75:17 77:4,6,11 79:11 80:13 corrected 79:11 corrections 79:9 correctly 46:4 48:5 52:14 72:12 correspondingly 13:5 cost 50:21 51:2,5 51:20 55:5 56:6 70:10,11 costs 70:1 coughing 53:6 57:22,23 counsel 4:19 14:2 37:16 country 23:9 County 79:3 80:3 couple 11:17 28:24 65:20 66:16 course 24:5 54:14 75:14	court 1:1 4:9,25 24:14 25:10 26:14 27:4 cover 6:7,10 covered 66:12 Credit 1:7,7,8,9,9 1:10,10 4:8,22 10:12 12:22 74:23 75:21 creditors 45:18 45:24 73:15 75:20 76:10,18 77:17 cross 78:1 CS 29:20,21 39:23 40:7 41:9 42:2 72:23 CSFB 28:14,18 28:21,25 29:16 30:4,9 40:17 41:1,15,19 42:7 42:10,13 67:6 72:8 73:5 CSR 1:25 2:5 80:25 cup 64:3 current 61:4 currently 18:10 customer 69:25 71:17 customers 34:12 35:23 69:21 71:4,19 73:23 cut 34:9,10,13 35:19,21 cutback 34:24 CV 7:2 D D 3:1 47:15 damage 72:17 damages 28:7 72:3 data 31:15 52:12 53:14 55:1,2,17 55:19,24,25	60:25 62:14 date 4:11 6:10,13 7:7,10 18:7 25:1 26:24,25 40:17 49:18,20 58:16 58:17 63:3 dated 42:13 dates 17:2 Davidson 67:3,12 Davidson's 67:15 69:5 day 45:23 79:12 80:22 days 20:6 21:2,20 21:20,23 23:16 DCF 42:10 43:25 dealing 27:22 deals 34:2 dealt 25:20 26:13 debt 51:8,12 58:5 58:11,13,22 59:6,22 62:24 63:3,3,6 65:6,6 77:21,23 Debtors 1:5 debts 58:25 decided 19:21 declarative 48:7 declare 79:6 decrease 42:22 deduce 62:3 deep 54:12 deepened 27:2 deepening 26:14 26:15 27:15,22 28:3,6 default 62:4,8,9 62:15,16 63:6 63:15,16,21,24 63:24 71:19 defaulted 71:7 DEFENDANT 2:2,16 Defendants 1:12 DEFENDANT'S 5:23
--	---	---	--	---

MICHAEL TENNENBAUM, Ph.D.

Page 4

definition 63:4	60:25	15:20 17:10	23:8 43:5 54:21	64:23 65:1,1,11
degrees 24:7	developed 32:10	38:2 64:22	easier 70:2	65:15 66:12,13
57:11	32:19,20	document 6:17,22	EBITDA 43:1	essentially 34:3
Delaware 1:2 4:9	development 9:20	7:21 29:3,14	economic 23:23	35:21
9:1 27:15	deviation 65:7	30:7 41:25 42:2	economics 7:6	estimate 18:21
delete 67:12	differ 43:24	42:9,11,13	economist 7:8,19	55:10 77:7
delinquency	difference 71:16	documents 3:9	7:25	et 1:4 4:8
29:12	76:14	5:22 10:7,8,9	economists 59:14	eventually 63:2
demanded 46:23	differences 35:2	12:10,12 14:1	Edwards 7:11,12	evidence 16:12
depending 60:5	61:7	17:1,1,3,8,14	effect 23:2 51:16	evident 14:1
depends 60:6	different 15:21	18:25 19:2,4,5,8	76:13	exactly 6:21
71:3	20:11 34:17	19:13,15,20,21	efficient 60:16,17	24:22 47:1
depo 78:2	38:24 51:20	19:24 20:1,4	61:19	50:12
deponent 80:17	56:10,11,13	23:19 25:3	efficiently 61:10	EXAMINATION
deposition 1:16	57:5 68:5,22,25	28:14,14,18,23	eight 9:8	3:3 5:13
2:1 4:6,15 5:17	71:18	30:5 40:15	either 12:11 49:2	examined 5:8
64:15,19 78:5	difficult 15:3	doing 12:3 15:25	66:14	80:7
79:8 80:8,10,15	direct 68:23	24:9 26:17,17	element 54:4	example 18:24
derivation 57:8	directors 28:15	33:21 40:15	employee 80:20	25:14 30:2 35:3
derived 41:10	30:9 40:6 67:7	66:5 74:15	employing 11:2	35:7 36:10
48:23	disclosed 39:15	dollar 58:8 65:25	employment 7:17	57:15 61:4,11
describe 39:15	discount 17:4	77:24,24	enable 69:20	62:6 66:9 69:22
50:20	48:23 50:3 51:3	dollars 65:20,21	endless 66:16	examples 7:22
described 37:13	51:14 67:15	65:25 68:1	engage 73:11	exceed 58:12
42:11 43:16	discounted 11:21	73:14	engaged 34:5	excellent 60:24
52:14 55:17	11:21 12:4	domain 66:6,7	engagement 7:24	excess 44:19,20
56:9 57:20 65:4	13:24	downturn 22:25	12:14,17 17:25	63:21,22 67:19
describes 30:19	discuss 26:7	Dr 4:6 20:24,25	engagements 7:22	72:18
describing 29:15	discussed 21:18	64:15,20	9:10	Exchange 59:12
description 3:8	26:9 30:21 32:5	dramatically 34:4	enormous 10:6	61:13
50:24 52:23	discussion 30:13	58:10	entered 43:7	exclusive 45:25
53:1 56:5	discussions 38:17	drawn 27:5	enterprise 44:10	Excuse 37:16
desire 16:7	62:1	driver 50:2,4	44:22 45:4,9	49:9
destroying 72:16	dispute 17:11	drivers 49:25	65:5	Executed 79:12
detail 12:2 25:23	disputes 12:22,25	50:7	enterprises 65:7	exercise 15:11
32:2	dissipate 76:3	due 58:11,16 63:3	entire 19:7	46:19 47:12,22
determination	dissipating 76:3	duly 5:7 80:8	entitled 32:9	48:12 51:1
10:5 13:23 17:4	distributed 45:18	duration 65:6	entity 37:12	Exhibit 3:9 5:24
20:17 54:2,5	distribution	D1 62:22	equal 62:21	6:2,6
55:15	45:24 62:20,21	D2 62:22	equation 65:9	EXHIBITS 3:7
determine 25:6	73:15	E	equity 51:7,13	3:11
27:1 46:16 47:6	District 1:2 4:9	E 3:1	52:1,4 53:23	existed 34:18 35:2
60:10,13 77:1	8:25	earlier 52:23	57:25 58:2,3,6	exit 35:17
determined 13:17	divide 18:20	68:17	58:22 59:1,7,15	expands 52:6
determining 17:1	65:18	early 8:11 9:22	59:17,23 60:4	expansion 22:19
51:15,25 52:3	Doctor 5:15 14:7		61:12,17 62:3	52:10

MICHAEL TENNENBAUM, Ph.D.

Page 5

expectation 47:19	fewer 36:17	44:21 58:25	forgetting 21:1	71:11
expenses 18:3,6	figure 36:11	62:6 69:15	form 7:2 25:18	generate 73:14
experience 14:8	figures 67:14	72:23 76:9,21	26:18 27:17	generated 13:22
15:2	file 75:25	fiscal 29:4 44:22	28:4 48:11 49:6	33:15
experienced 5:17	filed 32:22 73:7	five 23:22 24:4,14	49:16 57:6	generous 22:23
expert 8:9 10:16	files 7:1 17:11	53:13,17,18,21	80:12	44:19
13:4	filing 25:1 31:22	54:23 55:12	formula 52:14,23	getting 10:8 52:12
expertise 8:5 14:4	31:25 32:1 33:1	60:4 64:6 66:17	53:1,3,4	68:17
exploration 11:1	33:4,4,13 74:25	71:16	formulate 39:9	give 12:8 19:21
expressing 46:15	finally 23:7 29:2	five-year 30:14	formulates 51:9	given 19:15 25:2
extent 68:20 74:1	finance 69:20	30:20 31:13,20	forth 6:18	33:12 43:3
74:17	71:3 73:22	32:9 36:6 38:3	forthcoming 22:8	44:25 46:23
E-Toys 25:15	financeable 71:5	39:17 43:17	forward 33:14	48:22 58:25
----- F -----	finances 70:3	Flavell 7:11,12,16	35:15	60:9,9 63:1,25
F 1:24 80:5,25	financial 23:22,23	flow 12:4 13:24	forwarded 14:19	75:6 76:11
face 65:5	29:17 31:5 34:4	34:4 36:12	four 23:21 24:4	giving 20:3
fact 22:21 30:2	43:12 67:21,24	63:11 66:4 74:6	fourth 69:10	Glatt 2:9 4:16,24
33:21 37:5 39:1	68:3,21	74:9	framework 13:25	go 5:19 10:22
49:4 54:12 68:8	financing 22:16	flows 10:23 11:21	24:20 26:20	21:14 35:22
68:24 70:24	35:23 57:17	11:22 13:6,24	fraudulent 14:25	39:19 47:13
74:13 75:9 76:2	69:21 73:2 74:5	17:2,3 31:18,19	16:11	48:10 49:5
76:25 77:8	75:7,13	43:17 46:13,25	French 50:22,23	52:16 55:22
factor 55:8	find 22:4,6,8	47:19 49:25	51:19,23 52:6	63:15 64:6
fair 25:4,5 55:14	23:11 53:15	50:1 51:10,16	54:6,7,7,17,22	68:12 69:16
58:22	65:14 66:22	56:11,13 57:4	56:6,8 57:3	72:14 74:2
fall 33:15 34:8	77:12	64:1 74:4	Frequency 61:23	76:12
Fama 50:22,23	finds 57:10	fluctuate 58:10	friend 36:2	goes 54:1,4 57:16
51:19,23 52:6	firm 7:10 8:16 9:5	fluctuated 65:24	front 6:1	going 9:8,21 11:9
54:6,7,7,16,22	9:11 10:14,17	77:23	FTI 29:25	24:25 25:23
56:6,8 57:3	11:5,18 16:25	focused 12:3	full 60:20 73:6	33:14 34:9,10
familiar 17:13	17:14 18:17	focusing 52:4	full-time 7:17	34:11,13 35:15
36:21 37:5	19:6,9 20:2,20	following 52:19	functions 62:23	35:20,22 37:22
far 18:2,13 24:25	24:17 28:20,21	69:13	funding 69:20	47:16 53:17,18
25:8 31:18,19	29:18,19 30:24	follows 5:8	further 54:25	53:21 54:20
60:11 70:14	31:4 38:6 41:11	foot 46:21	68:16 72:9	58:18 63:20
favorably 26:15	42:3 55:5,11	footsteps 47:13	73:21 76:17,25	64:10,16 65:19
fee 68:9,10,25	67:3,15	forced 72:9 76:6	80:19	65:20 68:10,12
fees 18:3,5,16	firms 54:11,20	forecast 36:6	future 10:23 23:3	68:13,14,18,19
45:25 69:3	firm's 14:5	48:24	58:4 71:7 76:4	70:22 73:12,13
72:15,16,18,22	first 1:7,9,10 5:7	forecasts 36:13	f/k/a 1:7,8,10	73:21 74:24
72:23,24,25	6:6 8:8,12 10:1	37:10,11	----- G -----	76:2,3,23 77:9
feet 30:3,4	12:19 13:8,15	foreclosure 35:18	gamble 59:19	77:14 78:9
Felipe 1:24 2:5	13:20 14:11,14	foregoing 62:7	Gene 50:23	going-concern
5:1 80:5,25	14:16,17,22	79:7 80:8	general 53:4	46:6 73:18 76:1
fellow 10:18	29:20,21 39:23	foremost 55:2	60:15 69:16	going-forward
	40:7 41:9 42:2	foreseeable 76:4		34:7,21

MICHAEL TENNENBAUM, Ph.D.

Page 6

Goldman 25:15	hit 58:19	implication 68:17	29:11,12,13,15	15:9 18:12,19
good 5:15 70:14	HML 54:17,21	implications 27:5	29:16 39:8 41:1	34:23 39:3
gotten 76:14	hockey 42:20	43:24 54:6	60:20,23 61:1,3	55:16 61:21
greater 42:24	Holdings 1:9	60:25	61:9,10,14 62:2	involving 9:20,23
68:20	Holt 2:24 43:7	implies 54:7,22	62:4	10:3,4,15 11:21
gross 46:2,14	home 22:22 58:19	imply 46:24 62:7	informed 55:16	11:25 48:14
group 34:17	69:24 70:1,7,11	76:5	55:18 72:17,19	69:11
71:17	70:12 74:24	important 73:16	Inga 2:25 4:13	issue 13:5,6 26:13
growing 43:11	homes 1:4 10:3,5	impression 16:6	initial 42:21,21	27:3,4 45:13
guaranties 66:20	10:6,11 22:17	include 43:12	initialed 79:9	60:8
67:1,22,25	24:25 29:3 30:2	59:25 60:2	initiated 27:8	issues 10:4 11:7
68:19	32:9 36:22 37:3	included 5:16	ink 79:9	13:1 20:12
guarantying	37:6 39:4,11	17:17 20:1 36:6	input 41:15	21:15
69:12	40:8 50:10 72:3	includes 7:21	inputs 56:8,23	item 44:9,21
guess 9:23	74:11	including 22:16	57:2 62:7 65:4	-----
H -----	hoped-for 57:10	41:2	insinuation 13:14	J -----
half 65:17,19,20	Hopefully 73:11	income 34:4	insofar 70:5	Jason 17:2
65:25	hot 64:4	increase 23:1	insolvency 26:14	Jensen's 53:16
Halpren 10:18,19	hour 78:11	42:23 62:7	26:15,23,25	54:3
20:9	hourly 18:1,9	increased 66:20	27:1,15,22 28:3	journals 23:23
Halpren's 11:17	hours 18:12,14,16	independent 7:16	28:6	judgment 55:16
11:19	18:18,22	37:12 40:25	insolvent 13:11	55:18,24 57:1
hand 58:15 62:24	housing 8:2	41:15	13:18 15:5,14	59:16
80:22	hypothesis 74:23	indicate 44:14,17	15:18 16:2,13	July 42:16
happen 75:14	hypothesized	indicated 22:14	25:17	-----
76:6	49:3 50:1	25:22 27:21,24	inspection 58:16	K -----
happened 49:4	hypothetical	28:5 32:24 41:8	installment 73:22	keep 49:20 74:14
70:5 73:4,10	10:24 47:2,3,20	62:16	INSTRUCTED	Ken 50:23
happy 37:18 64:9	48:13 70:25	indicates 7:5 14:7	3:17	kick 68:20
head 78:3	I -----	75:23	interest 13:17	kind 24:19 46:22
heard 77:19	Ibbotson 55:2,6	indicator 54:24	15:25 52:16	55:17 58:1
heavily 34:5	idea 11:8 13:16	54:25	60:7 65:8	71:25
Heckinger 8:23	41:17 70:1	industry 22:19	interested 11:20	kinds 33:2,15,16
9:4,17	IDENTIFICAT...	23:1 43:5,11	11:24 80:19,21	34:6
help 66:18	3:7 5:24	53:15,18,21	internal 21:16	King 8:14,17 9:3
helpful 22:4	identified 65:9	54:8,10,12,19	28:24,25 29:3	9:25 11:14
23:12	identify 4:19	54:20 55:3,5,7	31:25 36:12	12:20 13:9,13
hereto 79:10	imagine 17:22	57:8,10 59:20	internally 13:23	13:15 14:11,20
80:18	immediate 77:9	60:1 71:11	35:14 40:9	14:22 26:7
high 22:23 36:16	immediately	industry-wide	investigate 75:14	King's 11:10
54:18 58:9,9	45:21 73:8	71:25	investigated	knew 15:6
63:17 69:4	impact 23:8 26:1	influenced 16:7	74:17 75:6	know 5:19 14:3
higher 71:25	53:5,7	information 3:14	investment 47:14	15:6 17:10,16
hindsight 71:15	impacting 23:2	12:8,16 23:15	investor 33:3,11	18:18 19:20
history 62:13	impacts 69:13	26:16 28:11,13	involved 8:1 10:2	20:12,15 26:19
		28:17 29:1,7,9	10:11 11:7,8	26:21 27:19

MICHAEL TENNENBAUM, Ph.D.

Page 7

31:20,23 32:3 32:13,17 36:25 38:8,13,15,17 39:1,2,9 40:16 40:17,22,25 41:3,12,16,23 42:5,8,8 45:13 50:10,12 61:3 65:13,22 66:21 68:22 72:24,25 73:3 74:1,8 75:23 76:7 77:16	layman's 58:1 lays 6:18 lead 10:16 leading 13:23 23:1 68:21 learn 14:14 learned 14:16,20 led 22:10,15,18 32:23 33:25 55:9 left 59:7,22 Legal 4:13 5:1 78:7 lesser 74:1 letter 6:7,10 let's 69:16,23 70:3 76:8 level 71:20 likelihood 58:12 59:16 62:20,21 likelihoods 62:4 line 36:11 lines 46:9 61:6 Linklaters 2:17 4:18,21 liquidate 45:22 74:8 76:7 liquidated 49:2 liquidation 1:5 4:7 12:22 14:12 14:15 15:4,12 15:17 16:1 22:2 75:12 77:10 liquidity 74:14,18 75:7 76:22 77:2 77:5,13 list 23:22,24 24:8 24:14 listed 24:3 25:11 25:25 litigation 10:3,12 13:2,25 17:13 little 51:4 62:13 LLC 1:8,9 LLP 2:17 loan 36:1,3 73:25	loans 22:21 69:12 loan-to-value 22:23 34:11 36:16 70:4 71:12,13 72:1 located 4:16 long 7:6,18 30:4 60:2 70:22 look 18:24 19:13 24:15 26:5,14 26:23,24 27:23 28:9 30:11 46:20 53:14 55:22,23,25,25 57:24 74:3 looked 13:25 19:2 19:8 24:5,15 looking 10:22 14:18 35:15 37:10 52:7 54:6 55:1 looks 27:14 47:16 52:3 Los 1:19 2:3,13 4:1,17 9:21 79:3 80:3 lost 66:2 70:13 lot 10:9 14:8 22:21 32:2 34:23 35:18 55:23,25 60:22 60:22,23 61:9 61:20,22 69:25 lots 24:11 33:21 33:22,22,22 lower 36:15,19	manufacturing 22:20 34:13 35:8,16 36:18 69:24 74:11 March 42:13 marked 3:7,11 5:23 6:2 market 48:15 52:5 54:18 60:24 61:3,19 68:14 marketplace 46:21 47:16 48:22 54:19 58:8 markets 60:16,17 60:21 61:5,10 market's 51:9 59:16 marks 64:14 match 71:24 material 24:19 materials 5:16 17:17 24:3,5 41:12 math 62:14 70:2 mathematical 52:14 matter 4:7 6:4 7:25 8:10,22,23 8:24,25 9:4,11 9:13,20,22 10:1 17:11 19:1 20:8 20:11,16,16 31:7 56:7 57:2 58:21 60:15 71:11 matters 10:11,15 11:20 14:8 maturity 62:25 mean 35:11 39:24 42:17 43:13 56:11 58:1 72:6 means 53:19 58:3 68:16 meant 16:9	measure 28:7 61:22 mechanical 56:7 meeting 10:25 11:1,6,10,12,14 11:16 12:9 20:5 21:12 meetings 21:11 members 16:25 memorandum 28:24 memos 28:24,25 mention 23:16 mercy 62:13 Merrill 4:13 5:1 78:7 mess 61:4 met 20:8,22 21:5 meter 60:24 methodological 12:3 methodologies 11:9 methodology 10:21,21 21:18 39:15 47:23 Michael 1:17 2:1 3:4 4:6 5:6 64:15,20 78:5 79:6,18 mid 9:22 11:13 22:18 43:23 middle 65:9 mid-2001 41:22 Miller 29:23 31:2 31:3 38:6,10 million 44:4,7,11 44:15,18,18,23 45:4,17,23 46:3 46:14 47:19 48:20 50:9,13 50:14 65:11,18 65:19 66:20,21 67:1,9,11,19 68:1,1 69:1 72:5 72:7,18 73:14
---	---	--	---	--

MICHAEL TENNENBAUM, Ph.D.

Page 8

mine 17:6	N 3:1	O	offer 39:9 46:20	operations 34:7
minus 62:19 63:4	name 10:17 29:18	OAC 68:10	48:16,19	35:17
minute 64:3	named 10:18	Oakwood 1:4	offered 48:15	operator 4:12
minutes 64:6	50:23 80:7,11	7:25 9:11 10:1,3	office 7:1 19:12	opinion 15:5,17
missed 52:24	names 11:18	10:5,6,11,15	21:10	15:23 44:13,24
mobile 22:16,22	21:10	11:3,5,7,22,25	offices 2:9 11:19	45:3,7 46:15
69:24 70:1,7,11	nature 11:1 12:21	12:13,17 13:5,7	Oh 39:12	59:5 61:7 75:19
70:12 74:11	12:25	13:11,17 19:8	OHC 1:5 4:7	75:20
model 50:22	ND2 62:19,19	19:13 21:17	14:12,15 15:4,6	opportunity
51:19,23,25	63:1,4	22:11,15 23:9	15:12,25 29:4	58:19
52:2,6,11,15,21	necessary 54:9	24:25 25:6,16	32:11 44:10	opposed 41:1,13
53:3,3,20 54:1,7	need 5:19 51:1	28:12,16 29:3	62:7 64:23	option 57:25 58:2
54:7,22 55:4,6	53:24,24 54:16	29:16,17,20	69:11 72:14,17	58:4 59:4
56:6,8,8 57:3,3	needed 15:4,6	30:10 31:7,10	OHC's 69:14	order 53:22 68:8
60:12 64:24	needs 16:12 68:24	31:12 32:1,9	Okay 7:14,17,21	74:14
69:11,18 72:4	negative 23:5	33:22 34:2,8,17	8:4,8,15,17,20	orderly 73:12
72:10,15 77:10	53:17	34:18,21 36:22	8:22 9:25 10:10	ordinary 58:21
models 60:10,12	net 36:10,19	37:12 40:7,8	12:8 14:11,21	organizations
60:20	never 20:17,22	46:17 47:8	15:10 16:15	31:5
moment 37:17	66:7,15	52:21 54:11	17:10 18:9,24	organizing 17:1
66:23 69:15	new 2:20,20 4:14	57:9 59:9 60:1	19:4,7,23 20:3	original 78:6
MONDAY 1:18	4:14 10:14 11:6	66:12 67:7	20:14 21:8 22:4	ought 50:2,9 56:2
2:4 4:1	23:3 59:12	69:20,23 70:3,5	22:10 23:11,21	outcome 80:20
money 60:7 70:13	61:13 78:8,8	71:3,6 72:3 73:4	24:3,8 25:4,14	outside 29:18
monitor 4:12	nine 44:9,21	Oakwood's 67:21	27:13 31:11,17	outstanding
months 31:24	65:17,18	67:24 69:18	36:5,21 37:15	61:24 65:15,18
60:3	Nods 78:3	71:2	37:21 38:13,20	68:11
morning 5:15,20	nonlawyers 12:5	object 48:6	38:23 39:19	overly 22:16,23
15:10	normal 62:20	Objection 25:18	40:16 41:4 42:4	overstated 53:20
mortgage 61:4,5	North 20:5 21:2	26:18 27:17	44:2 45:9 49:1	owner 58:3
mortgages 68:11	noted 79:9	28:4 48:11 49:6	50:10,20,24	ownership 47:1
69:21 71:7	noticed 4:17	49:16 57:6	51:19 57:1,19	51:11
mouth 25:5	notion 57:19	obligations 58:5	58:20 59:9	
move 48:7	November 25:2	58:11,13,17	61:11,22 62:18	P
moved 71:11	nowadays 70:1	59:22	66:9,18,25 67:4	page 3:3,8 6:6,17
Muir 19:25 20:3	number 4:10	obtain 74:5	70:10,15,21	7:21 23:21,22
20:7,21 21:3,6	22:14 32:23	obtained 42:3	71:9,22 72:2,12	24:4,4,13,14
21:13,21,25	35:1,4,16,17	54:5 55:1	72:14 73:20	25:11 28:9,11
22:4,10 23:12	36:11 53:15	obtaining 17:3	74:7,13,17,22	29:11,13,13
23:17 32:4,6,24	61:24 64:25	occasions 8:20	77:6,12,21	30:11,15,19
38:18 41:5,14	65:13,14,14	9:7	ongoing 32:25	32:8 36:11
50:12 71:9	67:2,9,11,18,21	occurred 67:13	oOo 4:3 78:13	37:11 38:3
Muir's 41:11,13	69:25 78:5	October 1:18 2:4	open 22:8	39:19 41:18
multiplied 65:14	numbers 36:5	4:1,11 76:21	operate 46:9	42:5 43:9 44:9
	39:10,16 43:1	77:13	operation 69:11	44:21 52:18
	65:8 67:12 69:5	odd 9:8 18:4 68:1	72:4	57:20,22,24
N				

MICHAEL TENNENBAUM, Ph.D.

Page 9

62:1,5,17 64:22 64:25 65:4,9 66:23,25 67:10 67:11 69:9 72:2 pages 1:10 6:17 28:18 29:7 30:20 52:13 56:9 66:23 paid 17:24 18:7 50:10 58:22,22 58:25 59:6 68:17,18,19 69:3,4 72:14,23 72:25 Pam 8:14 papers 17:12 parameters 52:20 59:24 60:9 part 21:11,23 35:9 38:15 40:8 41:10 42:9 43:5 44:17 51:14 54:21 57:17 70:19 particular 6:22 8:5 25:7,17 33:25 58:7 parties 35:24 80:21 partnership 7:15 Paul 2:18 4:18,21 pause 23:25 64:12 pay 54:19 58:4,14 58:18 59:21 penalty 79:7 people 18:17 21:9 71:15,17 percent 31:1 53:13 54:23,24 55:7,12 62:10 62:11 63:22,22 63:24 67:15 68:15 70:4 71:12,12,16,19 71:23,23 77:20 perform 15:15	performance 71:18 performed 15:11 27:6 period 32:25 58:15 66:11,15 73:6 80:18 periods 28:16 perjury 79:7 permanent 51:16 perspective 22:20 phone 8:13 phonetic 8:14 67:8 Ph.D 1:17 2:1 3:4 5:6 79:6,18 pick 69:25 PJW 1:4,8 place 4:15 65:22 80:11 places 56:1 plaintiff 1:6 2:8 4:24 16:10 plan 30:14,20 31:20 32:9,11 32:13,20,21,24 34:14 36:6,22 36:25 37:7 38:3 38:24 39:2,17 43:17 plants 34:13 35:16 play 31:7 please 4:19 5:3,10 37:22 plug 65:8 plus 18:3 29:16 29:18 point 16:4,5,9,10 16:14 25:7,17 26:24 31:13 52:19 58:7 62:6 69:10 70:6,13 70:25 72:2,10 76:2 pointed 27:12	points 21:19 popular 60:11 possibility 8:9 11:2 73:24 possible 62:2 74:22 75:3,5 potential 73:15 practice 7:16 preceded 36:20 preceding 7:15,15 precisely 33:16 42:8 preferences 14:24 16:11 Preliminary 67:3 premium 52:25 53:13 54:5,23 55:1,10,14,15 55:23 56:1,2 premiums 57:8 prepare 6:19 24:23,24 38:14 prepared 6:23,24 7:3 17:16 31:21 31:22 38:5,21 38:23 40:17 75:8 preparing 16:19 16:21 24:6 present 2:23 10:22 13:6 46:24 50:6,15 51:15 67:14 presentation 42:1 presentations 28:15 30:8 39:23 40:5,6,21 67:6 presented 41:9 presently 9:10 presume 43:10 presumption 63:9 pretty 33:17 61:16 previous 7:22 PREVIOUSLY	3:11 price 39:9 46:18 47:23 48:5 53:20 59:15 61:17 62:23 65:15 68:4 pricing 51:24 52:2,11,15,21 53:3,3,25 55:4 56:8 57:3 primarily 12:3 17:5 principal 74:14 prior 7:24 32:1 32:25 33:4,12 37:5 38:16 40:8 41:10 80:7 priority 69:4 probabilities 63:16 probability 58:9 62:8,9,15,16,19 63:2,5,15,21,24 63:25 probably 9:8 16:3 18:15 26:6 72:11 problem 27:14 problems 35:19 71:10 proceeded 13:22 45:22 proceedings 1:7 45:21 78:12 80:14 proceeds 48:20 73:1,22 process 5:17 10:8 21:16 33:12 35:10,12 49:4 50:25 51:15 69:18,19,23 70:21 71:1 75:11 product 17:6 23:4 42:6	professional 6:18 6:22 professor 7:6,18 project 9:21,23 projected 42:23 projection 42:5 projections 21:18 29:4,17 30:14 30:20,21,23,25 31:13 32:6,9,10 32:19,23 33:1,2 33:10,12,16,17 33:18,22 34:2,6 34:16,20 36:7 36:20 38:3,5 39:6,20,21,22 40:5,10,12,16 40:23 41:8,18 41:19,22,24 42:9,15,19,21 43:10,22,23 44:1,25 46:10 50:16,17 54:13 56:4 63:11,11 63:12,13,18,19 66:4,5,7,10,10 66:14,15,16 68:6,9 properly 6:13 proposed 32:11 32:20,24 37:8 proposition 53:4 prospect 13:6 34:4,8 46:13,25 59:19 74:4 prospectively 13:3 prospects 33:14 74:6,9 provide 10:14 13:3 15:7,7 24:19 provided 10:20 17:18 18:25 19:3,4,5 69:19 75:8 80:17
--	---	---	--	---

MICHAEL TENNENBAUM, Ph.D.

Page 10

providers 55:2	50:21 51:3,7,7	recognized 14:23	remains 57:16	required 47:17,18
providing 35:22	51:14,25 52:3,5	71:16	remember 6:21	51:7,7,10,25
provisions 36:21	52:7 53:23,25	recollection 8:13	10:16 26:12	52:3 53:8,23,25
public 66:6,7	54:2,8 65:8	12:2 15:1 26:13	30:7	54:2 55:3
publicly 59:10	67:15 68:14	29:5 40:20	remembering	respect 8:1 10:15
published 66:11	rates 17:5 47:17	record 33:8 37:22	62:12	10:20 11:6 13:3
purchase 70:4	47:18 48:23	37:24 64:10,13	reorganization	13:4 17:4,15
purchaser 47:3	50:3 53:8,20,20	64:16,18 78:9	31:6 32:11,13	19:1 20:10
47:24,25 48:2	55:3 60:7	recover 14:24	32:20,21 36:22	21:15 28:3 31:5
70:4 75:25	ratio 36:16 70:5	16:11	37:1,7 38:24	34:12,16 40:10
purchasers 22:22	71:12,13	recovered 77:7	39:2	41:17,22 42:4
47:7 59:19	rationalization	recovery 43:11	replace 75:7	47:17 48:3
purpose 21:12	34:14 35:11	77:16	report 5:16 6:2,4	50:24 53:14
23:18 24:18	rationalizations	reduce 35:16,17	6:12,13,16,20	55:3 65:5
purposes 51:25	35:9	67:13	6:24 7:3 16:15	response 30:16
put 6:1 15:3 25:4	ratios 22:24 34:11	reduced 34:3	16:19,22 23:14	result 26:23 40:14
p.m 78:11	52:9 72:1	37:13 80:12	23:21,24 24:6	48:16 52:12
	reach 43:20 63:5	reduction 35:4,8	24:13 28:9,20	65:2 72:3 74:25
Q	reached 26:1	reductions 73:1	29:19 32:8 36:6	resulted 52:19
qualification 45:2	read 25:10,12,12	referred 3:11	38:4 39:16	resulting 22:25
qualifications	33:6,8 79:7	35:10	40:11,17,18	47:19 65:2
6:18,23	realize 45:17	reflect 34:24 35:1	41:2 43:17 44:9	67:14
qualified 36:18	73:17	57:4 59:15	44:16,17,21	results 48:13,17
quarterly 70:21	realized 46:3,13	reflected 46:9	50:16 57:20	48:19 68:6
question 11:24	47:20 48:20	reflects 59:4,18	62:1 63:14	71:19 75:10
15:21,22,23	53:20 70:7	refused 72:8	66:19 69:9	resume 14:7
19:11,18,19	reason 23:14	regard 13:13	reported 1:23	retail 22:20 35:4
25:16,21 41:4	reasonable 55:10	regardless 57:12	24:14	35:17,23
41:23 47:5 48:3	59:25 60:13	57:15	reporter 5:1,3	retained 78:7
48:7 49:8 72:18	reasonably 58:9	rejected 13:14	33:7 37:16,20	retrospect 26:6
QUESTIONS	recall 8:3 11:18	relate 51:21	80:5,18	return 46:22,24
3:17	12:10,11,24	related 20:16	reports 66:13	47:17,18 51:7,8
quick 54:14	14:13 21:22	relating 72:15	repos 23:3	51:10 52:1,3,5,7
quickly 25:20	25:19 27:18,19	relationship	repose 23:5	53:8,21,23,25
quite 34:15 43:6	29:10 37:9	20:17 54:18	repossession	54:2,8 55:3
44:19	40:14,15 42:1	69:17	29:12	revenue 34:21
R	receivable 70:8	relative 54:18	repossessions	revenues 42:22
R 2:18 4:18	receive 16:17,21	60:19,20 61:24	23:2	42:24 43:11,12
raft 10:7	16:22,23	62:23 80:20	represent 4:20	review 10:9 25:13
ran 66:16	received 12:10,13	relatively 23:8	18:14,16 40:25	25:20 80:15
range 50:14 55:12	12:17 19:20,20	60:17 61:18	41:19 61:18	reviewed 23:23
56:3 77:20	75:24	relevant 13:11	represents 41:20	40:15 42:3
rapid 42:22 75:1	Recess 37:23	16:12	42:6	right 5:15,17 6:1
75:11	64:17	relied 23:19	request 11:11	6:8,16,25 7:8
rate 18:9 46:22,24	recession 23:7	remain 50:1,3,5,8	requested 3:14	9:1,18 12:19
	recognize 27:15	50:9 76:23	80:16,16	14:7,25 17:24

MICHAEL TENNENBAUM, Ph.D.

Page 11

19:10 20:19 24:10 25:10 29:17 30:15,17 32:5,8,11,18 35:24 37:3,13 37:19 38:6,25 39:4 40:4 43:18 44:11 47:3 48:10 49:10 50:18 51:17 52:16 55:20 56:4,21 59:1,10 69:4,9 70:8,13 70:16 76:17 risk 53:9,13 54:5 54:14,23 55:1,6 55:11,15 56:2 riskier 54:11 riskiness 54:9,10 risk-free 65:7 role 31:7 room 43:7 roughly 18:18,20 rounded 44:11,23 67:19 RPR 1:25 2:5 80:25 rule 64:5 ruled 28:6 rules 5:19 ruling 27:21 run 58:19	says 32:8 44:21 scale 37:13 scale-down 34:3 scanned 25:22 scenario 49:15 76:20 77:14 scholes 60:12,13 64:24 65:9 scope 24:22 second 37:21 52:18 54:4 sections 30:3 50:20 securit 70:24 securities 1:8 21:16 61:5 69:13 securitization 29:11 34:25 69:12,17,19 70:15 71:1 75:11 securitizations 23:6 34:6,10,24 35:19,21 67:13 69:2 70:22 72:9 73:6 74:15 75:8 75:22 securitize 73:22 73:25 see 6:12 47:16 52:23 58:20 69:22 seek 75:25 seeking 16:11 seen 27:11 33:21 self-described 42:10 sell 37:6 48:16,19 69:24 74:2,3,5,5 74:9 sellers 61:14 selling 74:11 sensitivity 52:4,7 sent 17:22 24:17 27:11	sentence 42:18 43:9 48:8 separate 20:15,16 September 29:5 39:14 43:16,21 44:3,6,10 45:5 45:10,11,14,21 46:16 47:7 48:18 49:1,15 49:23 50:7 57:12,13 62:8,8 62:10 63:10,23 64:23 65:12,16 65:23 69:1 72:8 73:5,14 74:23 75:19,22,25 76:11 77:21 series 21:11 35:14 63:8 serve 8:9 served 7:25 service 43:12 services 34:4 servicing 68:9,11 68:25 69:3 set 29:3,16 31:13 33:25 34:2,20 39:16 43:22 56:21,21 63:12 sets 43:25 50:15 56:13 severe 23:8 shape 34:17 Shapiro 20:24,24 20:25 share 12:12,16 58:8 65:20,21 65:22 shares 61:12,14 61:24 65:15,18 shop 41:11,13 short 37:17 66:15 shorthand 80:5 80:11 shortly 14:19,22 showing 42:21	shown 41:18 42:5 shrinks 58:17 shut 75:13 77:9 sic 17:17 side 17:12 sides 61:2 significant 35:4,7 similar 61:3 similarly 42:4 43:1 simply 47:22 72:8 73:1,5 74:24 75:22 simulate 48:13 single 30:3 situation 58:6,24 59:15 61:11 SIVs 61:5 six 24:13,14 25:11 60:3,5 66:17 size 52:8,25 53:5 53:7 55:14,23 56:1 62:23 63:6 slightly 67:18 sold 37:1,3 46:11 46:12 49:3 70:7 77:8 sole 16:15 Solutions 4:13 5:2 78:7 solvency 10:6 11:25 13:5 14:6 24:25 31:12 solvent 13:17 15:13,18 25:6 25:16 somebody 15:2 26:8 33:13 62:13 76:6 someplace 55:22 somewhat 63:19 son 17:3 27:12 sorry 17:20 33:5 33:19 53:5 57:21,23 63:23 66:2	sort 19:9 22:1 28:7 sorting 19:7 sought 14:24 73:11 source 23:15 27:25 28:12 38:15 65:1 67:1 67:9,11 74:14 76:22 77:13 sources 29:6 38:13 74:18 75:7 77:2 so-called 37:7 39:16 speak 12:1 20:25 specializes 31:4 specific 53:9,13 54:5,10,23,25 55:6,11,15 56:2 66:14 77:18 specifically 12:24 29:10 specify 48:21 speculative 59:18 spent 17:5 21:2 23:16 spoke 10:17 12:19 stack 3:9 5:22 17:17 Staff 16:25 stamp 28:22 29:21 standard 7:2 65:6 71:12 Standish 20:22 stand-alone 37:7 39:6 Stars 2:3,11 4:17 start 38:3 57:24 started 56:4 starting 6:17 31:12 37:11 57:20 62:1 state 4:20 7:6,18 79:1 80:1,6
---	--	--	---	---

MICHAEL TENNENBAUM, Ph.D.

Page 12

stated 63:15	59:21	25:14 28:2	49:7 58:21 59:3	transactions
statement 6:22	Suisse 1:7,7,8,9,9	36:10 40:11,13	59:14 65:24	47:17 48:22
67:21	1:10,10 4:8,22	41:7 49:14 51:4	66:19 73:4,7,9	60:22 61:20,22
statements 63:9	10:12 12:23	52:24 57:25	76:9	61:23,23 71:4
67:25 68:4,21	74:23 75:21	71:15,22 74:18	third 35:23	73:2
states 1:1 4:8	Suite 2:3,12 78:8	75:9	Thirty 68:1	transcript 79:8
35:18 68:22	summaries 17:16	telling 12:24	thought 20:10	80:13,16
status 24:20	summarize 38:4	tells 45:20 50:2,4	24:12 66:2	transparency
68:25	summarizing	ten 9:9	thousand 18:4	60:23 61:6
steps 35:14 46:21	17:1,7	Tennenbaum	three 21:22,23	transparent 61:2
stick 42:20	summer 34:19	1:17 2:1 3:4 4:7	23:16 53:13	traunches 69:13
stock 52:5 59:10	35:3 36:8,14	5:6 7:11,12 17:2	54:23 55:11	Treister 2:9 4:16
59:12 61:13	suppose 69:23	64:15,20 78:5	56:15,16	4:24 6:7 9:4
66:12	sure 10:13 14:16	79:6,18	time 4:11 13:10	26:8
stop 39:24 73:6	16:6 19:11 31:1	terminology	15:24 17:5 21:7	Trenwick 26:9,10
stopped 75:22	32:16,17 38:20	27:19	21:19,25 25:7,8	27:9,11 28:2,5
stream 34:22	73:19 76:16	terms 19:7 22:22	25:17 26:5,24	trouble 54:13
Street 4:14 78:8	swear 5:3	22:23 28:15	26:25 28:16	71:7
strike 48:6,7	Swiss 1:7	43:24 44:11,23	32:21,25 33:3	troubled 57:10
50:25 70:24	sworn 5:7 80:8	50:6 52:22 58:1	36:13 37:22,25	true 42:4 57:15
75:18 77:14	-----	test 76:8	54:13 58:7,11	61:1,2 79:11
strong 42:22	----- T -----	testified 5:8	58:15 60:7	80:13
stuff 24:9	take 5:15 18:20	testify 80:8	64:11,14,16,20	Trust 1:5 4:7
Stutman 2:9 4:16	37:18 53:4,9,14	testimony 10:16	65:24 66:6,11	12:22 14:12,15
4:23 6:7 8:16	59:19 62:2 64:2	13:4,18 15:10	66:15 70:22	15:4,12,17 16:1
9:4,11 14:5 19:6	64:5,6 67:12	15:15 28:17	74:13,20 76:2	22:2
19:9,16,21 20:2	68:7,24 70:18	77:1 79:10	78:9 80:11	truth 80:9,9,9
20:7,20 24:17	taken 2:2 55:9	text 40:11	timeframe 60:2	try 69:22
26:8 28:21	80:10	texts 23:22	times 16:12 62:25	trying 71:24
30:24 42:3	takes 31:12	Thank 4:25 5:11	today 4:12 5:1	turn 50:17 59:19
Stutman's 19:12	talk 22:10 36:3	37:20	78:6	turnaround
subsequent 31:22	38:10 41:4	thereabouts 36:8	Today's 4:11	54:14 57:11
31:23	57:19,24 69:15	they'd 36:2	told 73:16	59:20 60:3
subsequently	71:9	things 11:10	Tom 16:25 17:9	turned 13:10
20:1	talked 14:11 71:9	14:23 15:3	Tony 2:10 4:23	17:12,23 19:25
subset 19:16	talking 38:2	22:15 24:8	top 24:4 30:19	50:16 71:18
subsidiaries 1:11	57:12	26:21 32:25	36:11 62:5	turns 15:8
substantial 23:9	tapes 78:6	48:18 53:15	64:25 68:13	two 15:3 21:9
43:11 58:13	techniques 43:16	61:5	total 18:2,3	52:22 56:13,18
substantially	43:21 50:17	think 5:18,21	trade 42:20	65:20,25 78:6
63:21	51:23	11:13 14:10	traded 59:10	typewritten 80:12
subtle 16:4,5,9,10	telephone 11:15	16:5 18:5 21:22	61:12	----- U -----
16:14	26:11	24:1 26:9 27:10	trading 77:21	ultimately 77:17
successful 43:2	tell 9:25 12:21	27:10,11 28:19	train 66:2	unaffected 50:8
suffered 72:3,17	14:12 16:23	28:21 29:10,21	transaction 47:25	underlie 33:18
sufficient 59:20	22:13 24:22	31:24 44:17	48:1,2,14 70:6	

MICHAEL TENNENBAUM, Ph.D.

Page 13

34:7 57:4 underlying 69:18 understand 15:20 19:11 32:18 45:2,19 46:4 52:13 55:14 58:20 59:3 61:25 69:22 72:6,12 76:25 understanding 13:12,20 15:12 21:25 31:9 37:2 37:4 39:5 understood 13:8 15:24 23:18 United 1:1 4:8 universe 19:8 unsecured 77:16 USA 1:8,9 use 37:17 52:20 useful 15:8 26:16 utilize 60:12 61:10 65:4 utilized 26:22,22 44:25 51:24 67:16 68:6 utilizes 52:12 55:6 utilizing 60:10 64:24 U.S.A 1:11	43:20,25 44:3,6 44:7,10,22 45:4 45:9 46:1,2,14 46:25 47:20 49:14,18,20 50:1,2,2,4,4,6,7 50:7,9 51:15 54:18,20 58:4,9 58:12,16 59:17 59:22 60:5,7,25 62:2 65:1,1,3,5 65:5,7,11 66:19 66:25 67:14,22 67:25 71:2 72:16 73:13,17 76:1,3 valued 46:5 48:14 58:7 values 10:22 55:16 60:1 61:8 62:21 65:10 69:14 77:7 valuing 44:20 variability 52:5,8 variable 54:17,21 59:25 60:6 variety 60:10,12 various 10:23 17:2 21:19 28:14,16 39:23 46:10 57:11 66:11 varying 24:7 vast 18:15 versus 4:8 25:15 51:12 viable 71:5 video 4:12,12,15 Videographer 2:25 4:5,25 5:10 37:21,24 64:10 64:13,18 78:2,4 videotape 4:6 64:14,19 videotapes 78:6 view 33:1	viewed 43:3 voice 4:19 volume 1:9 4:5 61:23 74:2 78:5 vs 1:6 W wait 64:8 walk 46:21 47:13 62:12 want 13:2,9 16:5 25:4 27:22 44:14 52:24 63:8 64:2 wanted 11:8 15:12,17 33:13 warn 49:10 wasn't 16:8 57:23 waste 26:5 waterfall 68:12 68:13 Waterhouse 68:4 way 19:17 27:20 35:20 36:18 53:22 56:10,24 69:3 70:18 74:6 weighted 51:2,5,6 51:10,11,20,22 55:4 56:5 65:6 went 21:17 32:2 49:3,12,22 66:8 71:22 West 4:14 78:7 We'll 36:1 we're 37:10,24 64:13,18 74:24 74:24 we've 48:4 whatsoever 15:19 Whitman 2:24 Wickes 2:18 3:5 4:18,21,21 5:11 5:14,25 24:2 25:24 27:7 28:1 28:8 33:5,9 37:18 38:1 43:8	47:10,21 48:9 48:25 49:7,10 49:19 53:11 57:14 64:21 77:25 78:3 wide 30:3 57:8 widespread 61:7 willing 58:14,18 63:9,10 willingness 59:18 Wilshire 9:21 wind 65:10 witness 2:2 3:3 5:4 8:9 24:1 25:19 26:19 27:18 28:5 47:11 48:12 49:17 53:7 57:7 80:7,22 word 42:17 words 25:4 60:21 work 8:4,17 11:2 15:23,25 16:22 17:6,11,24 20:8 24:10 26:17 33:21 38:15,16 40:8,15 41:1,10 41:13,14,19,20 42:6 47:6 60:15 66:3,5 worked 7:22 9:4 9:13,19,22 16:25 17:3 31:15 56:18 working 8:16 9:10 11:5 32:1 workings 61:18 world 68:23 worth 59:1 63:2 worthless 60:4 wouldn't 32:18 76:13 X X3:1 XYZ 36:2	Y yeah 44:15 75:13 year 43:2 44:22 62:10 years 9:8 29:4 49:4,13,24 53:17,18,21 60:5 66:8,17,17 York 2:20,20 4:14,14 10:14 11:6 59:12 61:13 78:8,8 Yoshioka 16:25 17:9,19,20 Yoshokowa 17:17 Yun 26:10 27:9 27:10,13 72:20 72:21 Z zero 59:1 \$ \$10,000 70:7,12 \$100 67:9,11 69:1 \$100,000 69:25 \$12,000 18:5 \$144 67:1 \$20,000 18:16 \$25.8 65:11 \$300 44:7 50:14 \$350 44:4 45:4,17 45:23 46:3,14 47:19 48:20 50:9 73:14 \$395 18:10 \$405,000 18:4 \$50 72:5,7 \$90,000 70:8,18 # #9555 2:5 80:25 0 01 29:4 57:13 62:8,10 63:10
---	--	--	---	---

MICHAEL TENNENBAUM, Ph.D.

Page 14

63:23 65:12	200 50:13	3	8	
73:14 75:25	2000 23:7	3.5 54:24	80 30:4 63:22	
02 29:4 57:13	2001 23:8 28:16	30 9:8 41:18	80s 9:24	
62:9	29:5 33:19	65:16 77:23		
02-13396 1:4 4:10	39:20 40:10	30th 65:23 73:5	9	
04-57060 1:8	42:16 43:21,23	74:23	9 71:23	
1	44:1,3,23 45:5	300 44:11,15,18	9.5 65:19	
1 1:12 4:6 64:15	45:11,12,18,21	31 43:9	9:44 2:4 4:2	
1st 77:13	46:5,13,17 47:7	310 2:14	9:45 4:12	
1,000 18:22,23	48:18 49:1,15	32 42:5	90 70:4 71:12,19	
1-80 1:10	49:23 50:7	33 52:13 56:9	900 78:8	
10 67:15	56:21 64:23	34 52:13	90067-6013 2:13	
10:39 37:22	65:16,23 66:20	350 44:23	903-9000 2:21	
10:52 37:25	67:13,24 69:1,7	36 52:18,19 68:1	95 71:12,23	
100 1:12 31:1	69:16 72:8 73:5	37 56:9	9555 1:25 80:6	
66:20 67:19	74:23 75:20,22	370,000 18:20	96.9 62:11	
10039 78:8	76:11,21 77:14	39 66:24,25		
10105 2:20	77:22	390 18:4		
11 1:4 31:10	2002 25:2 28:16	395 18:11,20		
33:13 73:7	33:15,20 34:8	4		
74:25 76:20	34:19 35:3 36:8	40 30:4 77:20		
11:38 64:11	36:14 39:14	41 66:24 67:10,11		
11:43 64:14,16	40:21 42:13	425 18:10		
11:53 64:20	43:16 44:7,10	45 57:20,24		
12:20 78:9,11	45:10,14 46:5	45th 4:14 78:8		
1200 2:3,12	53:22 56:21	46 65:10		
1345 2:19	64:24 66:21	48 62:1 64:22		
14 28:9,11,18	2003 32:15	65:4		
29:7 30:3	2005 8:11 11:13	49 62:17 64:22,25		
144 66:20	42:23 43:1	5		
15 29:11,13	2006 20:6	5 3:5,9		
16 29:13,14 30:3	2007 1:18 2:4 4:1	5.07 55:7		
18 28:11,18 29:7	4:11 6:11,14	50 44:18 62:6		
1901 2:2,11 4:16	79:12	77:20		
1969 7:6	21 30:19	51 69:9 72:2		
1971 7:7,10	212 2:21	54 6:17 7:21		
1975 7:13	22 1:18 2:4 4:1,11	6		
1980s 9:22	30:20 36:11	6 7:13		
1986 7:7	37:11	60 77:24		
1990s 22:18 34:23	228-5755 2:14	601 3:9 5:24 6:2,6		
2	25 4:14 78:7	62 63:22		
2 44:9 64:19	25th 29:5	62.3 62:10 63:24		
20 30:11,19 32:8	27 6:11			
38:4 72:18	27th 6:14			
	28 30:15,21			
	29 39:19			

Exhibit F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	
)	
OAKWOOD HOMES CORPORATION	)	Case No. 02-13396 (PIW)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Chapter 11
)	
OHC LIQUIDATION TRUST,)	
)	
Plaintiff,	)	Adversary Proceeding
	)	Civil Action
	)	No. 07-799 (JJF)
v.)	
)	
CREDIT SUISSE , et al.)	
)	
Defendants.)	
)	

Expert Rebuttal Report of Allen M. Pfeiffer

February 29, 2008

Table of Contents

1.0	INTRODUCTION.....	3
2.0	VALUATION ANALYSIS.....	3
3.0	CONCLUSION.....	11
Appendix A – Documents Relied Upon in Forming Expert Opinion.....		12
Appendix B – Allen M. Pfeiffer Resume.....		15

1.0 INTRODUCTION

I, Allen M. Pfeiffer, am a managing director at Duff & Phelps, LLC, and have advised hundreds of times on valuation, financial and solvency analyses. My full resume is attached to this report as Appendix B. At the request of counsel for Defendants, I have reviewed the Expert Report by Dr. Michael Tennenbaum dated April 27, 2007 ("The Tennenbaum Report"). The Tennenbaum Report describes various financial analyses of Oakwood Homes Corporation ("Oakwood"), performed by Dr. Tennenbaum, and his conclusions regarding the valuation of Oakwood as of September, 2001 and September, 2002. Based on commonly accepted valuation theory, commonly accepted financial analytical practices, the facts, and documents cited by Dr. Tennenbaum, I believe Dr. Tennenbaum's analyses and conclusions contain serious errors of methodology and reasoning. I set forth those errors in detail herein.

The documents I have considered in forming my opinions are referenced in Appendix A. Duff & Phelps is being compensated at their hourly rates ranging from \$165 to \$625 per hour. Our fees are not contingent upon either the outcome of the litigation or the conclusions expressed herein.

2.0 VALUATION ANALYSIS

1. **Dr. Tennenbaum's damages analysis is speculative and provides no useful conclusion.** In my opinion, the damages calculation concerning a distressed company using financial analysis and valuation principles must be grounded in a damages model that is based on reasonably knowable facts that can be verified to a reasonable degree of certainty. Dr. Tennenbaum's analysis and conclusions are problematic in a number of specific areas, but perhaps most problematic is that his model used to calculate damage to Oakwood is not rationally based on any reliable facts. Dr. Tennenbaum's analysis is based on the decrease in "value" of Oakwood between two specific dates calculated by Dr. Tennenbaum using a simple Discounted Cash Flow ("DCF") analysis

applied to projections selected by Dr. Tennenbaum for each specific date. Such a model reflects no consideration of the actual result of Oakwood's bankruptcy nor does Dr. Tennenbaum's model attempt to calculate the result of a hypothetical bankruptcy filed a year prior to Oakwood's actual filing. In my opinion, given that Dr. Tennenbaum believes Oakwood should have filed for bankruptcy in September 2001,¹ and was damaged by the delay in filing for bankruptcy, a more plausible accurate and reliable damages analysis in this case would have compared (i) Oakwood's value upon the resolution of Oakwood's actual Chapter 11 proceeding with (ii) Oakwood's value upon the resolution of a hypothetical Chapter 11 proceeding filed in or around September 2001. While such an analysis would prove difficult to construct, in my opinion, a damages model and conclusion in this case would require a more detailed and sophisticated analysis than the simplistic DCF analysis utilized by Dr. Tennenbaum.

II. Contrary to accepted valuation practice, Dr. Tennenbaum ignores virtually all contemporaneous information.

1. It is well established in IRS Revenue Rulings², accounting concepts³ and standards⁴, valuation standards⁵ and academic literature⁶ that market-based

¹ Expert Report of Michael Tennenbaum, p. 51

² IRS Revenue Ruling 59-60 states "A current appraisal by the investing public should be superior to the retrospective opinion of an individual."

³ Statement of Financial Accounting Concepts No. 7, February 2000, pages 4-5 and 18 state "While the expectations of an entity's management are often useful and informative, the marketplace is the final arbiter of asset and liability values." Pages 8-9 state "Observable marketplace amounts are generally more reliable and are more efficiently determined than measurements that must employ estimates of future cash flows." Page 12 states "If a price for an asset or liability or an essentially similar asset or liability can be observed in the marketplace, there is no need to use present value measurements. The marketplace assessment of present value is already embodied in such prices."

⁴ Statement of Financial Accounting Standards (SFAS) Number 157 page 9 states "a Fair Value Hierarchy" that "prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The fair value hierarchy gives the highest priority to quoted prices (unadjusted) in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3)." Page 8 states "in some cases, a single valuation technique will be appropriate (for example, when valuing an asset or liability using quoted prices in an active market for identical assets or liabilities)."

⁵ American Society of Appraisers Business Valuation Standards pages 5-6 state "The appraiser shall gather, analyze, and adjust the relevant information necessary to perform a valuation appropriate to the scope of work. Such information shall include...capital markets providing relevant information...prior transactions involving the subject business, an interest in the subject business, or the securities of the subject business."

information is the best indicator of a company's value. Value indicated by market data, when available, is preferred to valuation based on estimates of future cash flows. However, Dr. Tennenbaum ignores virtually all contemporaneous and market-based information in conducting his analyses and reaching his conclusions.

2. Dr. Tennenbaum agrees that the market for Oakwood stock is efficient yet he ignores the market price when valuing the equity of the company.⁷ He fails to use actual market data even though Oakwood stock was traded on the NYSE⁸. Furthermore, Dr. Tennenbaum's analyses result in conclusions that are inconsistent with contemporaneous market-based information regarding Oakwood. For example, Dr. Tennenbaum's equity value calculation suggests prices of \$2.71 and \$0.13 for Oakwood stocks on September 30, 2001 and September 30, 2002, respectively.⁹ Those values are substantially lower than the actual trading prices for Oakwood stock, which were \$4.23 and \$1.65 on September 30, 2001 and September 30, 2002, respectively. In my opinion, Dr. Tennenbaum's failure to consider market-based information and/or account for substantial differences between his conclusions and contemporaneous market-based information violates commonly accepted valuation principles.
3. Similarly, Dr. Tennenbaum also ignores Oakwood's bond trading prices during the relevant time period as well as information regarding the ultimate recovery of holders of Oakwood's bonds.¹⁰ For example, post September 2001, Oakwood's bonds showed a significant improving trend. Furthermore, Oakwood's market-derived enterprise value, comprised of

⁶ *Corporate Valuation: Tools for Effective Appraisal and Decision Making*, Bradford Cornell, 1993, pp. 34-35. Dr. Bradford Cornell opines in his book, *Corporate Valuation*, that "*The Stock and Debt Approach*: When the securities of a company being appraised are publicly traded, there is a straightforward valuation procedure: Sum the market values of all outstanding securities.... The efficient market hypothesis also implies that the stock and debt approach, where it can be applied, provides the most accurate estimate of a company's true value."

⁷ Deposition of Michael Tennenbaum, October 22, 2007, pp. 64-67

⁸ *Ibid.* p. 59

⁹ Calculated by dividing the equity values on p. 49 of The Tennenbaum Report by Oakwood's shares outstanding as of 9/30/01 and 9/30/02, respectively.

¹⁰ Oakwood 8 125% 10-year senior notes due 3/1/09 continue to trade with reportable prices on Bloomberg.

the combination of the market value of the company's stock and bonds, also showed an improving trend after September 2001. Additionally, the bondholders ultimately received at least 47 percent recovery.¹¹

Dr. Tennenbaum fails to consider or account for these facts and in my opinion that failure is a violation of commonly accepted valuation principles.

4. Dr. Tennenbaum ignores other contemporary data. These include the fact that Oakwood's credit ratings remained stable between September 30, 2001 and September 30, 2002. S&P maintained its B- rating, Moody's maintained its Caa2 rating, and Fitch maintained its CCC rating.¹² Furthermore, as of March 14, 2002, the middle of Dr. Tennenbaum's damage period, S&P was predicting an industry turnaround in the coming year.¹³ In fact, Oakwood's management believed at the time that there was a chance for a turnaround. Oakwood's CEO had confidence in the company and did not believe until June 2002 that it should file for bankruptcy.¹⁴ These contemporaneous actions and views are inconsistent with a conclusion that value was being destroyed during the same time period. However, Dr. Tennenbaum fails to consider this contemporaneous market-based information that is contrary to his conclusions. In my opinion, such a failure violates commonly accepted valuation principles.
5. In addition, Dr. Tennenbaum fails to consider the actual sale of Oakwood's assets in its bankruptcy proceeding. On November 25, 2003, Oakwood's assets were sold for \$375 million to Clayton Homes, a competitor of Oakwood.¹⁵ This actual sales price, in bankruptcy, is greater than the \$350 million value Dr. Tennenbaum concludes that Oakwood would have received as of September 30, 2001. However,

¹¹ Post-confirmation Quarterly Summary Report, September 30, 2007 Summary Balance Sheet Information, footnote 3

¹² Bloomberg

¹³ Standard & Poor's RatingsDirect®, "U.S. Homebuilders Demonstrate Remarkable Resilience", March 14, 2002.

¹⁴ Deposition of Myles Standish, September 21, 2006, pp. 126, 142-143

¹⁵ Total purchase price reflecting adjustments per the Proposed Supplemental Disclosure Statement dated February 6, 2004, Exhibit C.

Dr. Tennenbaum fails to consider this fact and its impact on his conclusion that value was destroyed between September 30, 2001 and September 30, 2002. The actual asset sale price also should have been considered as a test for reasonableness relative to Dr. Tennenbaum's concluded value as of September 30, 2002. Dr. Tennenbaum's DCF-based valuation of \$300 million as of September 30, 2002 is considerably less than the actual November 2003 asset sales price, but Dr. Tennenbaum fails to consider or account for this difference. In my opinion, commonly accepted valuation principles require consideration of the ultimate sales price in the bankruptcy proceeding in reaching an opinion on damages.

6. Dr. Tennenbaum does not take into account market-wide factors that affected values during this period of time which in my opinion should have been considered based on commonly accepted valuation principles. For example, between September 30, 2001 and September 30, 2002, the S&P 500 Index declined 21.7 percent, which suggests the potential for market-wide forces affecting declines in value. Dr. Tennenbaum fails to take into account any decrease in value that was due to overall market performance, which must be separated from any potential change in value due to specific management decisions and company performance. Overall market performance should have been considered by Dr. Tennenbaum in reaching a conclusion that Oakwood suffered damages as a result of continued operation of its business model.

III. Dr. Tennenbaum's valuations are based on financial projections that Dr. Tennenbaum considers unrealistic or that he does not attempt to validate.

1. In my opinion, any DCF valuation analysis must begin with projections that are verifiable and reliable. However, Dr. Tennenbaum performs his DCF analyses for 2001 by simply adopting certain sets of projections which he considers to be "aggressive," "hockey stick projections".¹⁶ First,

¹⁶ Deposition of Michael Tennenbaum, October 22, 2007, pp 42

Dr. Tennenbaum's concern about the validity of the projections should have caused him to make downward adjustments to the projections to compensate for what he believed to be the projections' inaccuracies. However, he made no such adjustments. Utilizing projections that have not been adjusted to compensate for perceived inaccuracies is contrary to commonly accepted valuation principles. This is particularly true given Dr. Tennenbaum's belief that Oakwood was in financial distress in September 2001. When conducting a DCF analysis of a company in financial distress, more careful thought and attention is required. A valuation expert cannot treat a DCF analysis as a standard exercise comprising a simple adoption of any set of projections as the basis for the valuation in the context of a distressed company.¹⁷

2. Moreover, not only did Dr. Tennenbaum fail to make any adjustments to correct inaccuracies in the 2001 projections he has no knowledge of the underlying assumptions that informed the creation of the 2001 projections. The mid 2001 and late 2001 projections that Dr. Tennenbaum uses as the basis for his valuation of Oakwood as of September 30, 2001 came from Credit Suisse documents which he knows very little about. He did not investigate who created the projections. He did not attempt to verify what methodology or assumptions were used. In my opinion, his unquestioning

¹⁷ *Investment Valuation*, Aswath Damodaran, 2000, pp. 16-17. Dr. Aswath Damodaran writes in a section entitled *Applicability and Limitations of Discounted Cash Flow Valuation* "Here are some scenarios where discounted cash flow valuation might run into trouble and need to be adapted. *Firms in Trouble* A distressed firm generally has negative earnings and cash flows and expects to lose money for some time in the future. For these firms, estimating future cash flows is difficult to do, since there is a strong probability of bankruptcy. For firms that are expected to fail, discounted cash flow valuation does not work very well, since the method values the firm as a going concern providing positive cash flows to its investors. Even for firms that are expected to survive, cash flows will have to be estimated until they turn positive, since obtaining a present value of negative cash flows will yield a negative value for equity¹⁷ or for the firm....*Firms in the Process of Restructuring* Firms in the process of restructuring often sell some of their assets, acquire other assets, and change their capital structure and dividend policy. Some of them also change their ownership structure (going from publicly traded to private status and vice versa) and management compensation schemes. Each of these changes makes estimating future cash flows more difficult and affects the riskiness of the firm. Using historical data for such firms can give a misleading picture of the firm's value. However, these firms can be valued, even in light of the major changes in investment and financing policy, if future cash flows reflect the expected effects of these changes and the discount rate is adjusted to reflect the new business and financial risk in the firm."

adoption of projections that have no basis that he knows of is contrary to commonly accepted valuation principles.¹⁸

3. In addition, the projections utilized to value Oakwood as of September 30, 2002 are inappropriate. Dr. Tennenbaum used projections developed by Miller Buckfire during the course of Oakwood's bankruptcy proceeding as the basis for his valuation of Oakwood as of September 30, 2002.

However, the Miller Buckfire projections did not reflect, and were not intended to reflect, the actual condition of Oakwood in 2002. The Miller Buckfire projections were created in 2003 for a stand alone plan of reorganization, developed during the bankruptcy proceeding. The projections assume that Oakwood emerges from bankruptcy as a smaller company having discontinued certain aspects of its business.

Consequently, those projections represent a very different company than Oakwood as it existed in September 2002. Further, as with the 2001 projections, Dr. Tennenbaum admits he knows nothing about the sources of data used by Miller Buckfire.¹⁹ He further concedes that this set of projections was not available as of September 30, 2002. In my opinion, the use of projections developed in the year following the relevant valuation date, and based on assumptions inappropriate for the condition of Oakwood as of the valuation date, violates commonly accepted valuation principles.

- IV. **Dr. Tennenbaum does not estimate the costs of a hypothetical bankruptcy and subtract them from his September 30, 2001 valuation.** In my opinion, a proper valuation of Oakwood as of September 30, 2001 that assumes Oakwood should have filed for bankruptcy as of that date, must consider the potential costs associated with a bankruptcy filing. The bankruptcy process is known to be expensive. A recent study shows that professional fees alone

¹⁸ Deposition of Michael Tennenbaum, October 22, 2007, pp 41-43

¹⁹ Ibid. pp. 38-39

averaged \$8.8 million for major bankruptcies.²⁰ Other factors such as loss of vendor support, loss of key management, adverse publicity and other factors exert additional pressure on corporate results. Dr. Tennenbaum should have considered and accounted for the adverse financial effects of bankruptcy. In my opinion, a valuation that does not account for such costs violates accepted valuation principles.

V. **Dr. Tennenbaum does not adjust his valuation conclusion for concerns related to Oakwood's marketability in September 2001.** In my opinion, a DCF valuation of Oakwood as of September 30, 2001 must consider and adjust for concerns related to Oakwood's marketability in September 2001. However, Dr. Tennenbaum's DCF analysis relies on a financial projection of Oakwood as a going concern without consideration of any liquidity constraints and market distress. Dr. Tennenbaum provides no analysis of whether a sale of Oakwood was possible. Dr. Tennenbaum further fails to consider whether there would have been a buyer, at what price, sales costs, and the length of time to market and execute a sale. Furthermore, distressed companies often sell at distressed prices, especially when there are no strategic buyers. Dr. Tennenbaum identified no such buyer.²¹ In my opinion, Dr. Tennenbaum's failure to consider and analyze these issues violates commonly accepted valuation principles.

VI. **Dr. Tennenbaum's conclusion regarding fees earned by Credit Suisse is based on no independent analysis.** Dr. Tennenbaum claims that Oakwood paid more than \$20 million in fees to Credit Suisse.²² However, he has performed no independent expert analysis to support this conclusion. He

²⁰ "Chapter 11 Professional Fee Study", Table 14, Stephen J. Lubben, November 1, 2007, p. 37. This study was funded by American Bankruptcy Institute. The statistics cited here is for cases in the Big Case Dataset with confirmed plans.

²¹ In 1999, Merrill Lynch, the board's advisor, explored strategic alternatives for the company, but reached the conclusion that "the best course of action available to the Board could be to stay independent", implying that it was unable to find a strategic buyer for the company at an attractive price. – Minutes of special meeting of the Board of Directors held August 2, 1999, Bates No. MCLH0958

²² Expert Report of Michael Tennenbaum, p. 51

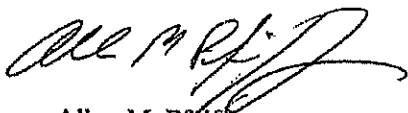
admits that he does not know whether these fees represent cash paid by Oakwood or reductions in proceeds from financing transactions.²³ He does not appear to know the source of any of the numbers or whether the calculations were performed correctly. Therefore, there is no analysis to examine on this issue.

3.0 CONCLUSION

I have reviewed The Tennenbaum Report in light of commonly accepted valuation theory and commonly accepted financial analytical practice. I conclude that his theory of damages and his methodologies are speculative, unreliable and inadequate in this context. Dr. Tennenbaum's analysis is inconsistent with generally accepted valuation practice in several important ways including faulty assumptions, inconsistent application of theory, omissions of key contemporaneous facts and market data, and use of admittedly doubtful projections. I, therefore, find Dr. Tennenbaum's conclusions regarding damages to be unpersuasive.

I reserve the right to update, supplement, or revise my opinion if and when additional information or data becomes available for my review.

Sincerely,

A handwritten signature in black ink, appearing to read 'Allen M. Pfeiffer', written in a cursive style.

Allen M. Pfeiffer
Duff & Phelps LLC

February 29, 2008

²³ Deposition of Michael Tennenbaum, October 22, 2007, pp. 72-73

Appendix A – Documents Relied Upon in
Forming Expert Opinion

Documents Relied Upon in Forming Expert Opinion

Produced:

- Expert Witness Report of Michael Tennenbaum, April 27, 2007 and documents produced by Dr. Tennenbaum in connection with the report
- Deposition of Michael Tennenbaum, October 22, 2007
- Deposition of Myles Standish, September 21, 2006
- Minutes of Special Meeting of the Board of Directors Held Monday, August 2, 1999, Bates No. MCLH 0958
- Supplemental Report of Alan C. Shapiro, August 28, 2007

Not Produced:

- Post-confirmation Quarterly Summary Report, September 30, 2007 Summary Balance Sheet Information
- Disclosure Statements In Re Oakwood Homes Corp., September 9, 2003, January 30, 2004, and February 6, 2004
- IRS Revenue Ruling 59-60
- American Society of Appraisers Business Valuation Standards
- Institute of Business Appraisers business appraisal standards
- Statement of Financial Accounting Concepts No. 7, February 2000
- Statement of Financial Accounting Standards Number 157
- *Investment Valuation*, Aswath Damodaran, 2000
- *Corporate Valuation: Tools for Effective Appraisal and Decision Making*, Bradford Cornell, 1993
- "Chapter 11 Professional Fee Study", Stephen J. Lubben, November 1, 2007
- Standard & Poor's RatingsDirect®, "U.S. Homebuilders Demonstrate Remarkable Resilience", March 14, 2002.

- Oakwood's credit rating history from Standard and Poors, Moody's and Fitch, acquired via Bloomberg
- Capital IQ: Oakwood number of shares outstanding as of 9/30/01 and 9/30/02
- Bloomberg: Oakwood Homes Corp., S&P 500 Index
- FactSet: Oakwood daily bond prices: CUSIPs 674098AF and 674098AE
- S&P Bond Guides: Oakwood month end bond prices

Appendix B – Allen M. Pfeiffer Resume

DUFF & PHELPS

300 Headquarters Plaza East, 12th Floor
Morristown, New Jersey 07960
Tel: 973-775-8260
eFax: 443-601-2265
Cell: 201-390-2004
allen.pfeiffer@duffandphelps.com

ALLEN M. PFEIFFER

Position	Managing Director, Duff & Phelps, LLC Global Service Leader - Dispute Consulting, Complex Valuation and Bankruptcy Litigation Practice
Education	M.B.A. – Finance, <i>with distinct honors</i> , Columbia Business School B.S. – Economics and Mathematics, <i>cum laude</i> , Yeshiva University
Professional Summary	<p>Mr. Pfeiffer has more than twelve years of experience with valuation, cash flow assessment and capital structure analysis. He has led hundreds of corporate finance engagements with advice related to an entire business, an interest in a business or an asset. Mr. Pfeiffer has advised both foreign and domestic buyers, sellers, joint venture partners, plaintiffs and defendants in mergers and acquisitions/corporate finance situations with regard to business valuation, raising financing, spin-offs, transaction support, bankruptcy, litigation, tax, financial reporting, valuing derivatives, fairness opinions, strategic planning, IP holding companies, restructurings and capital structure analysis.</p> <p>The New York Supreme Court, the United States Bankruptcy Court, the American Arbitration Association and arbitrators operating under the rules of the International Chamber of Commerce have accepted Mr. Pfeiffer as a valuation and cash flow expert. In addition to his testifying experience, he has worked often as a lead consultant to attorneys in the context of retrospective solvency and many other valuation and corporate finance matters.</p> <p>Mr. Pfeiffer was a Managing Director with Standard & Poor's Corporate Value Consulting at the time of its merger with Duff & Phelps in September 2005 and was a member of the CVC practice of PricewaterhouseCoopers LLP at the time of its sale to Standard & Poor's. Prior to joining Coopers & Lybrand in 1995, Mr. Pfeiffer worked for an affiliate of Alex Brown and worked as an actuarial analyst at Kwasha Lipton, a benefit consulting firm. Mr. Pfeiffer successfully completed four professional exams within his tenure as an actuary: multivariable calculus, probability theory, mathematical statistics and numerical equations.</p>
Selected Experience – Corporate Finance	<p><u>Transaction Advisory</u></p> <ul style="list-style-type: none">• Advising a large private equity fund with respect to the value of their illiquid investments for a corporate reorganization• Advising a private equity firm on the value of the intellectual property of a large electronics equipment manufacturer for purposes of refinancing• Advising the board of directors of a leading international company with respect to potential responses to a potential hostile takeover bid

ALLEN M. PFEIFFER
Page 2

**Selected Experience –
Corporate Finance
(continued)**

- Advised shareholder and founder on the value of his company for purposes of put option rights
- Advised special committee of the board and largest minority shareholder with respect to the value of intellectual property of a technology company that received a buyout offer determined to be inadequate by the special committee
- Advised on the issuance of a solvency opinion for “RemainCo” relative to two of the largest spin-offs in history
- Advised a technology company in its negotiations with several international top-tier companies and several venture capital firms
- Advised an investment firm with respect to the price paid for an ownership interest in a telecommunications company, associated warrants and other deal terms
- Advised an international entertainment conglomerate with respect to pre-deal due diligence and valuation analysis
- Advised a technology company on valuation of the various levels of preferred stock prior to its successful initial public offering
- Advised on many buy-side valuation issues as part of due diligence efforts for a major telecommunications company
- Advised and presented to the board of directors and senior management of a leading technology company on the value of its total intellectual property portfolio for the application of the Delaware Law capital surplus test
- Provided independent valuation assessment of investments to board of directors of a major investment fund
- Sell-side advisory work for a major international IT services company
- Advised in the successful resolution of a joint venture in a buy/sell option discrepancy
- Advised technology company on the benefits of spin-off vs. divestiture
- Advised on terms of transaction and negotiated on behalf of a technology company
- For several companies, advised on the value of common shares for issuance of new warrants to management
- Advised government ministers in their consideration of the privatization of a telecommunications company, a bank and an airline

ALLEN M. PFEIFFER
Page 3

**Selected Experience –
Corporate Finance
(continued)**

- Advised on valuation of subsidiary of a technology company for issuance of executive warrants
- Advised on transactions and valuation matters related to more than ten major Israeli companies
- Advised on the restructuring of five distinct businesses owned in a holding company
- Advised on numerous fairness opinions as a member of review committees in Duff & Phelps and Standard & Poor's Corporate Value Consulting

Strategic Planning

- Advised a subsidiary of an international entertainment conglomerate with respect to the value of its contingent liabilities
- Advised a private equity fund focused on technology and telecommunications with respect to the components of several transactions and assessing the value of its common stock
- Developed business case, strategy and valuations for many late stage start-ups
- Advised on new e-commerce business opportunities and capital investments within large multi-national corporations
- Corporate Finance liaison with the PwC Israel office
- Advised a telecommunications company relative to financial planning and funding for the launching of a CLEC business
- Valuation and advisory work associated with a dramatic operational turnaround of a multi-billion dollar company on behalf of an LBO fund over three years
- Utilized real option valuation metrics to solve complex and uncertain value propositions
- Advised on the strategic modeling and valuation regarding the combination of major professional sports teams in a joint venture

**Selected Experience –
Bankruptcy Litigation**

- Testified as an expert witness in Philadelphia Bankruptcy Court (Oct. 2003) on behalf of secured lenders regarding the solvency of a manufacturer of technology
- Testified in deposition as an expert witness on the reasonableness of a business case and budget for a large retailer in a bankruptcy/contract dispute

ALLEN M. PFEIFFER

Page 4

**Selected Experience –
Bankruptcy Litigation
(continued)**

- Testified on behalf of a tractor company in a dispute regarding the value of recovered assets in bankruptcy
- Testified in deposition as an expert witness on behalf of a large cable company (MSO) against its joint venture partner with regard to cable systems in Puerto Rico
- Leading analysis of solvency at various dates for a fraudulent conveyance lawsuit filed against a leading global company by a former subsidiary claiming damages in excess of \$2 billion
- Advising counsel for a multi-national bank in defense of their investment banking work performed for a multi-billion dollar planned joint venture
- Advising counsel and several hedge funds on the valuation of the derivative features attached to convertible bonds for purposes of arriving at OID (original issues discount) in bankruptcy litigation
- Advised on the valuation of a hedge fund relative to the reasonableness of a major transaction prior to the filing for bankruptcy
- Advised counsel with respect to solvency in large anticipated litigation against group of pre-petition lenders to an international financial services company that spiraled into bankruptcy after fraud was detected
- Led the retrospective solvency analysis of a supermarket business at various dates for a private equity fund and assisted counsel and insurance companies in effectuating a successful mediation
- Led the analysis of a preference case filed against a private equity firm and related to the bankruptcy filing of a large financial services company; analyzed convertible preferred stock, produced expert report and rebuttal report and assisted attorneys in deposition preparation
- Led analysis of solvency for a large fraudulent conveyance lawsuit filed against an international consumer products company; produced expert report and rebuttal report, assisted attorneys in preparation for depositions, drafting of certain motions, development of case strategy, preparation for and participation in trial and post-trial submissions
- Led analysis of solvency for a preference lawsuit related to a multi-billion dollar pharmaceutical distribution company; produced expert report and rebuttal report, assisted attorneys in preparation for depositions, drafting of certain motions, development of case strategy and preparation for trial
- Advised on a retrospective solvency analysis for a large retailer in a preference action

ALLEN M. PFEIFFER

Page 5

**Selected Experience –
Other Litigation Support**

- Testified as an expert witness in arbitration, International Chamber of Commerce (Sept. 2002) regarding the valuation of a minority interest in a European Internet service provider; also quantified damages
- Testified as an expert witness in New York Supreme Court (Nov. 2002) regarding the value of the unregistered shares of a public Internet company; both sides in case unanimously accepted the testimony
- Testified as an expert witness in arbitration (AAA) related to fair and reasonable terms and fair market value associated with a long-term agreement between a cable company and a content provider (Feb. 2004)
- Testified in trial with respect to the value of the founder's ownership interest in a technology company in conjunction with a matrimonial action
- Testified as an expert witness in deposition and produced an expert report on diminution of enterprise value, damages and lost profits to a cruise business
- Leading the analysis of damages sustained by a leading communications company in connection with a malpractice claim related to a multi-billion dollar transaction
- Advising counsel with respect to solvency and valuation issues related to the merger and refinancing of a corporate finance advisory firm
- Advised counsel with respect to theories related to damages on a high profile insurance matter
- Advised counsel on the appropriate financing terms for a telecommunications transaction in preparation for a potential litigation
- Led the analysis of value provided by executives in managing large company-invested hedge funds
- Led the analysis of a multitude of derivative transactions for a litigation
- Led the assessment of damages for an early-stage cable television company
- Advised counsel with respect to solvency and litigation issues in a large planned spin-off of a subsidiary
- Led the analysis of the value of divisions of a large consumer products company in defense of an IRS probe related to a tax-free spin-off
- Led the analysis of a merger between two market-leading companies and provided a retrospective fairness opinion; conversion ratio was challenged by a group of shareholders

ALLEN M. PFEIFFER

Page 6

**Selected Experience –
Other Litigation Support
(continued)**

- Led the analysis of whether a material adverse change clause applied to the circumstances associated with the decline in 2000 venture capital funding levels
- Retained to advise on the relative value of two contracts and related clauses in the cable and entertainment industry
- Advised a utilities company on the issuance of new securities – debt vs. equity considerations for cost of capital purposes in arbitration
- Advised counsel on the appropriate care, transaction price and valuation methodologies in defense of a lead advisor investment bank in the technology and consumer product industry; produced expert report and rebuttal report and assisted attorneys in depositions
- Led analysis of a shareholder oppression lawsuit filed in New Jersey regarding the valuation of a privately held trucking company
- Assisted attorneys in the valuation of a manufacturing company in a purchase price dispute
- Advised plaintiff on the value of complex options and warrants for purposes of assessing damages in litigation

**Selected Experience –
Valuation for Tax
Restructuring and
Reporting**

- Led numerous tax restructuring engagements for a multi-billion dollar telecommunications company
- Valued dozens of subsidiaries worldwide in connection with the spin-off of major technology businesses for determining tax gain/loss
- Valuation of the subsidiaries and assets of a chemical company as part of the consideration of the tax structure of a large contemplated transaction
- Valuation of worldwide subsidiaries of a biotech company for the planning of intellectual property holding company restructuring
- Determined the value of restricted stock discount and/or lack of marketability discount for dozens of companies
- Valued several businesses for estate tax purposes

**Selected Experience –
Valuation for Financial
Reporting**

- Valued the Series C Preferred Stock of an independent marketer of natural gas and electricity
- Valuation of the common equity and an embedded derivative for a privately held, telecommunications software company

ALLEN M. PFEIFFER

Page 7

**Selected Experience –
Valuation for Financial
Reporting (continued)**

- Led dozens of engagements related to purchase price allocations and intangible asset impairments - SFAS 141/SFAS 142, SFAS 121, SFAS 133 and APB 16
- Participated on PwC task force committee to communicate with the SEC on the valuation of In-Process Research and Development
- Drafted numerous SEC response letters for several major companies on valuation issues, in all cases avoiding financial restatements
- Numerous engagements related to valuation of options in connection with SFAS 123 and as components of purchase price
- Assessed discounts for blockage, minority holdings, lack of marketability and restricted stock

**Continuing Learning
Programs**

- Led development and presented many Continuing Learning Education courses for attorneys regarding legal and financial analysis issues related to fairness opinions, valuation, expert witnesses and fraudulent conveyance
- Led PwC's and S&P's internal training programs in corporate finance and valuation each year from 1997 through 2002
- For S&P in 2004-2005, designed curriculum for national training and analysis of complex client issues along with New York University professor Dr. Aswath Damodaran
- Presented various topics at industry, accounting and valuation seminars and conferences; participant in ALI-ABA conferences, ABI conferences and other industry conferences

**Trial and Arbitration
Testimony**

Lee v Chou

Supreme Court of the State of New York, County of New York

Index No. 350601/03

October 2006

- Testimony in a matrimonial action on behalf of the Defendant with respect to the value of Plaintiff's ownership interest in a business that he founded

Suraleb, Inc v Production Association "Minsk Tractor Works",

Republic of Belarus

Arbitration Institute of the Stockholm Chamber of Commerce

December 2005

- Testimony in arbitration on behalf of the Respondent, Minsk Tractor Works, as an expert witness related to the value of recovered assets in bankruptcy

ALLEN M. PFEIFFER
Page 8

**Trial and Arbitration
Testimony
(continued)**

CSC Holdings, Inc. v. Yankees Entertainment and Sports Network, LLC
American Arbitration Association, New York
Case No. 13 181 02839 03
February 2004

- Testimony on behalf of the Claimant as an expert witness related to fair and reasonable terms and fair market value associated with a long-term agreement between Cablevision and YES Network

Official Committee of Unsecured Creditors (Exide Technologies) v. Credit Suisse First Boston
United States Bankruptcy Court, Eastern District of Pennsylvania
Case No. 02-11125
October 2003

- Testimony on behalf of the Defendant on the solvency of Exide Technologies in a fraudulent conveyance lawsuit

Commonwealth Associates, LP v. Smartserv Online, Inc.
Supreme Court of the State of New York, Southern District
Index No. 600869/00
November 2002

- Testimony on behalf of the Plaintiff of restricted shares in a publicly traded Internet company

Banestyrelsen et al. v. France Telecom
International Chamber of Commerce
Case No. 11351
September 2002

- Testimony on behalf of the Plaintiff of a minority equity investment in an international Internet service provider

**Deposition Testimony
only**

In re Adelphia Communications Corp., et al
United States Bankruptcy Court, Southern District of New York
Case No. 02-41729
March 2006

- Deposition testimony on behalf of the Debtors as an expert witness related to the value of a cable company in conjunction with the failed buyout of a joint venture partner

ALLEN M. PFEIFFER
Page 9

**Deposition Testimony
only (continued)**

Celebrity Cruises, Inc , et al v. Essef Corp , et al.
United States District Court, Southern District of New York
Case No. 96-Civ-3135
July 2005

- Deposition testimony on behalf of the Plaintiff as an expert witness on diminution of enterprise value, damages and lost profits related to disease outbreak in the cruise industry

In re Footstar, Inc , et al
United States Bankruptcy Court, Southern District of New York
Case No. 04-22350
June 2005

- Deposition testimony on behalf of Kmart Corporation, Respondent, as an expert witness related to reasonableness of income projections, in dispute against Footstar, Inc., et al. as Debtors

Exhibit G

27/03/2008 PFEFFER, ALLEN M.

0001

1
2
3 UNITED STATES BANKRUPTCY COURT
4 DISTRICT OF DELAWARE

-----X

5
In re:

6 Chapter 11
OAKWOOD HOMES CORPORATION, Case No. 02-13396 (PJW)
7 et al., Jointly Administered
8 Debtors.

-----X

9 OHC LIQUIDATION TRUST,
10 Plaintiff,
11 Adv. Proc. No.
04-57060 (PJW)

12 -against-
13 CREDIT SUISSE FIRST BOSTON, et al.,
14 Defendants.

-----X

15
16 Videotaped DEPOSITION of ALLEN M. PFEIFFER,
17 held at the offices of Linklaters LLP, 1345 Avenue of
18 the Americas, New York, New York 10105, on the 27th
19 day of March 2008, commencing at 9:36 a.m., before
20 Colette Cantoni, a Registered Professional Reporter
21 and Notary Public of the State of New York, pursuant
22 to Notice.
23
24
25

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

A P P E A R A N C E S:

STUTMAN TREISTER & GLATT
Attorneys for Plaintiff
1901 Avenue of the Stars
Los Angeles, California 90067-6013

BY: TONY CASTANARES, ESQ.

LINKLATERS LLP
Attorneys for Defendants
Credit Suisse First Boston
and the Witness
1345 Avenue of the Americas
New York, New York 10105

BY: J. JUSTIN WILLIAMSON, ESQ.

ALSO PRESENT:

SARAH ENGELMAN, Videographer

2

27/03/2008 PFEFFER, ALLEN M.

(Whereupon, Exhibit 625 was premarked for
identification.)

THE VIDEOGRAPHER: This is the video
operator speaking, Sarah Engelman of LegalInk Los
Angeles, 20750 Ventura Boulevard, suite 205, Woodland
Hills, California.

Today is March 27, 2008 and the time is
9:36 a.m.

We're at the offices of Linklaters, 1345
Avenue of the Americas, New York, New York, to take
the videotaped deposition of Allen Pfeiffer, in the
Matter of Oakwood Homes Corporation, et al., OHC
Liquidation Trust versus Credit Suisse First Boston,
et al., in the United States Bankruptcy Court
District of Delaware.

Will counsel please introduce themselves
for the record.

MR. CASTANARES: Tony Castanares, Stutman
Treister & Glatt, for plaintiff.

MR. WILLIAMSON: Justin Williamson of
Linklaters, for Credit Suisse defendants.

THE VIDEOGRAPHER: Will the court
reporter, Colette Cantoni of LegalInk Los Angeles,
please swear the witness.

3

Pfeiffer

A L L E N M. P F E I F F E R,

having been previously duly sworn, was
examined and testified further as follows:

EXAMINATION

BY MR. CASTANARES:

Q Good morning, Mr. Pfeiffer.

A Good morning.

Q You are a valuation professional?

A Yes.

Q What is valuation?

A Valuation is -- is the exercise of opining
on what something is worth or what a company is worth
or the value assigned to a particular asset, company,
project, or investment.

Q And when you say value, are you referring
to a concept of fair market value?

A There are many different -- there are many
different distinctions within the, you know, in
terminologies within the valuation profession, and
fair market value is certainly one of them.

Q When you attempt to opine on the value of
a company, is it fair market value that you seek?

A Depending on the context, it may be.

Q Okay. What other kinds of values does a

4

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

valuation expert render opinions on, such as they
might be relevant to Oakwood Homes, as you've come to
understand it, besides fair market value?

A It would be helpful if you could narrow
the question down a little bit to --

Q Okay. You have made a study of Oakwood
Homes; is that correct?

A I've made a study of the report of
Dr. Tennenbaum as it related to Oakwood Homes.

Q All right. And so I gather you looked at
some information about Oakwood Homes; is that right?

A That's correct.

Q And did you attempt to determine any
values for Oakwood Homes?

A I did not.

Q At any time?

A Only as it relates to Dr. Tennenbaum's
report.

Q Did you attempt to find any values for
Oakwood Homes or any part of it, whether it related
to Dr. Tennenbaum's report or not?

A Yes.

Q Okay. What kind of values did you attempt
to determine for Oakwood Homes?

5

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

Pfeiffer

A I looked at the market value for the, public market value, for the equity of Oakwood Homes. I looked at the market value of the debt of Oakwood Homes. And various other indicators of value as it relates to the rebuttal of Dr. Tennenbaum's report.

Q All right. And when you say the market value of the equity of Oakwood Homes, are you talking about multiplying the number of shares outstanding by the share price on a specific date?

A For the common equity -- for the public capitalization, the public equity value for Oakwood Homes, I'm referring to the amount of shares outstanding and the share price.

Q All right. Did you attempt to find any other equity value for Oakwood Homes besides what you are referring to as the public equity value?

A I did not -- I did not provide an opinion on equity value beyond that.

I looked at what Dr. Tennenbaum concluded on equity values --

Q All right.

A -- but I did not separately opine on a value.

Q You didn't do anything on your own?

A And as relates to what I did on my own, I did not determine the value of Oakwood as of various dates, or as of the dates that are related to in Dr. Tennenbaum's report.

However, if you asked me if I looked at any specific values, I mentioned a few that I did look at, which was the public equity and debt values.

Q Do any others come to mind?

A Certainly I looked at the determination of value as of the Clayton acquisition of Oakwood in 2003.

Nothing else comes to mind right now.

Q All right. And you've done hundreds of evaluations in your career; is that correct?

A Correct.

Q You served as an expert witness on more than one occasion; is that right?

A That's right.

Q How many times?

A I've served as an expert witness somewhere between 10 and 15 times.

Q Always on valuation issues?

A Issues related to valuation, corporate

6

8

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

Pfeiffer

Q All right. You said that you looked at the value of debt; is that correct?

A I said I looked at the public market value of the debt.

Q All right. And you're not talking about looking at the value of Oakwood's bonds on the markets on specific dates multiplied by the total value of bonds outstanding face, correct?

MR. WILLIAMSON: Objection to form.

A That's part of the exercise, yes.

Q What other parts are there to it?

A There's other debt. There's some other small portions of debt besides the public values but --

Q Did you attempt to find a value for that other debt?

A No.

Q So as far as Oakwood is concerned, the studies that you have made of value are of the value of its public shares and the value of its public debt; is that correct?

MR. WILLIAMSON: Objection.

A Again, I looked at all determinants of value as it relates to what Dr. Tennenbaum did.

finance, cash flows.

Q And is it your belief that the opinions of professionals such as yourself on valuation subjects are of assistance to judges and juries in making determinations about evaluations?

MR. WILLIAMSON: Objection.

A I think at times that's correct.

Q And are there recognized methodologies in your profession for determining evaluations?

A Yes, there are.

Q And are those methodologies set forth in any academic literature?

A There certainly is an abundance of literature on various methodologies.

Q Did you understand Dr. Tennenbaum's report as attempting to come to opinions on the fair market value of Oakwood's assets as of any point in time?

A I think to a certain extent Dr. Tennenbaum was attempting to do that.

Q Is fair market value a term that has a meaning for you?

A Yes.

Q What is that meaning?

A It is the price at which a willing buyer

7

9

1 Pfeiffer
2 and a willing seller would exchange property or
3 business, given a sufficient level of information
4 between the two.
5 Q Does the definition assume that neither is
6 acting under any compulsion to sell or buy?
7 A That's also true, yes.
8 Q And does the definition also assume that
9 the property is exposed to the market for a
10 reasonable period of time?
11 MR. WILLIAMSON: Objection.
12 A There's -- depending on the context of the
13 valuation, that is an assumption that's made.
14 Q Okay. Have you given an opinion ever on
15 whether a company was solvent or not in -- not in the
16 sense of whether it could meet its obligations as
17 they came due, but whether the fair market value of
18 its assets did or did not exceed the amount of its
19 liabilities?
20 A I've provided that opinion many times, but
21 I'm not sure in what context you're asking.
22 Q I'm not really asking about any specific
23 context right now.
24 But in those situations in which you have
25 opined on whether in fact a company was solvent, was

10

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 the value of the assets that you're comparing to the
3 amount of the company's liabilities the fair market
4 value, as you have defined it, or was it some other
5 kind of value?
6 MR. WILLIAMSON: Objection.
7 Are you asking in each of the instances,
8 in all of the instances was it the same? Was it --
9 Q Do you understand my question, sir?
10 A I do.
11 Q Okay.
12 A Sitting here today, I can't recall every
13 instance of solvency where I've provided an opinion
14 to a board or a court or provided advice to a client
15 on that issue.
16 I've done it many times. And many times
17 I've done it in the context of fair market value.
18 But it could be that I've done it as well in other --
19 with another definition of value as well.
20 Q You have opined, though, on a question of
21 solvency previously; is that correct?
22 MR. WILLIAMSON: Objection.
23 A I have, yes.
24 Q And what's your definition of solvency?
25 A It's the -- there's three tests of

11

1 Pfeiffer
2 solvency as it relates to fraudulent conveyance and
3 there's one test of solvency as it relates to
4 preference. And it depends -- it depends on the --
5 it depends on the case, definition may vary.
6 Solvency is not a -- not clearly defined
7 in every single case.
8 Q Do you know of a definition of solvency
9 which is that the assets of a company or an
10 individual at fair value are more than the amount
11 required to pay his debts or less than the amount
12 required to pay his debts? Is that a definition
13 familiar to you?
14 A That is a broad, simplified definition
15 with respect to one of the -- one of the tests of
16 solvency.
17 Q I'd like to refer to one of the tests of
18 solvency that compares value of assets to
19 liabilities.
20 Would you give me your definition of that
21 sense of the term "solvency" or "insolvency."
22 A Again, I believe that certain courts have
23 different definitions but the -- the broad definition
24 I would use is the fair market value of the assets to
25 be greater than the face value of the debt of the

12

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 company.
3 Q All right. Now let's take a company that
4 is like Oakwood, to the extent that you know anything
5 about Oakwood -- strike that.
6 Have you ever been asked to render an
7 opinion on the value of a company as of some date in
8 the past?
9 MR. WILLIAMSON: Objection.
10 A Yes.
11 Q And did you understand that that was what
12 Dr. Tennenbaum was attempting to do in his report?
13 A That's one of the things he was attempting
14 to do, yes.
15 Q All right. And are there recognized
16 methodologies within your profession, that is to say
17 the profession of valuation experts, for determining
18 the value of a company as of some date in the past?
19 A Yes.
20 Q Describe those methods for me, please.
21 MR. WILLIAMSON: Objection.
22 A The -- it's important to not allow your
23 opinion to be infected by hindsight. And when you
24 look back at a value as of a certain date in the
25 past, there are various methodologies, which include

13

1 Pfeiffer
2 a market approach, market transactions, market
3 comparables, discounted cash flow, contingent claim
4 analysis, liquidation analysis.
5 I believe it is incredibly important to
6 look at public market values, other contemporaneous
7 indications of solvency, including bids for the asset
8 of the company. That also includes people's sense of
9 worth as it relates to advisors or other rating
10 analysts, equity analysts and the like.
11 It's a broad, a broad array of things that
12 one must look at in opining on the value of a company
13 as of a historical date.
14 Q When you look at, say, the work of an
15 equity analyst, you just don't take the equity
16 analyst's opinion of value whole cloth and make it
17 your own opinion, do you?
18 A No.
19 Q You use that as a data point in the
20 various methodologies that prevail in your
21 profession; is that right?
22 MR. WILLIAMSON: Objection.
23 A I use it as one indication.
24 Q Okay. And would the same thing be true of
25 credit ratings by Standard & Poor's or Fitch's or

14

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 something like that?
3 A I use it as one --
4 Q Now --
5 A -- information, one set of information.
6 Q -- in the ordinary course in evaluating a
7 company as of a certain date in the past, one of the
8 methodologies that is used in your profession is the
9 discounted cash flow method; is that correct?
10 A That's correct.
11 Q Another is a market value approach; is
12 that correct?
13 A That's correct.
14 Q And that's the one where you add up the
15 market value of the company's stock as of a certain
16 date plus the market value of its bonds on a certain
17 date?
18 A I wouldn't describe the approach that way,
19 no.
20 Q Describe it for me then, please.
21 A The market approach would be to look at
22 similar companies, comparable companies within that
23 industry, look at how their, if they're publicly
24 traded companies you look at how their publicly
25 traded -- publicly available information with respect

15

1 Pfeiffer
2 to their market cap relates to particular financial
3 indicators. For example, revenue or EBITDA or
4 earnings or some other measures.
5 And you see that multiple and you
6 understand it, you analyze it, you look at the ranges
7 of multiples within the various comparable companies,
8 and then you consider assigning that similar multiple
9 to the company that you're valuing.
10 Q And is that sometimes called a comparable
11 company analysis?
12 A Yes.
13 Q And so there's a discounted cash flow
14 analysis and a comparable company analysis.
15 Is there another analysis that consists of
16 looking at the value of the company's shares plus the
17 market value of its public debt?
18 A Yes.
19 Q Does that have a name?
20 A I would say it's looking at market values.
21 Q All right. That's the one you contend
22 that Dr. Tennenbaum should have used in this case,
23 isn't it?
24 MR. WILLIAMSON: Objection.
25 A I contend he should have done a lot more

16

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 than that, but that's one of the things I contend,
3 yes.
4 Q Okay. Did you do a comparable company
5 analysis at any time that related to Oakwood?
6 A I did not -- I did not conclude a market
7 comparable analysis.
8 Q Did you gather any data toward doing a
9 market -- a comparable company analysis on Oakwood?
10 A Not that I recall.
11 Q Did you ever do a discounted cash flow
12 analysis for any purpose that related to Oakwood?
13 A Again, I did not conclude on one. And if
14 I did one, I don't recall it.
15 Q Okay. Now when I say you, sir, you
16 weren't selected as the expert witness in this case
17 until the night before your report was filed; isn't
18 that correct?
19 The report was filed on February 29th,
20 about two weeks ago, or three weeks ago, and you were
21 selected the night before; isn't that true?
22 MR. WILLIAMSON: Objection.
23 A I was told about a month before the report
24 was due that I may be the expert in this case. I
25 wasn't officially told that they'd like me to sign

17

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 the report until the night before.
3 Q Okay. And so I want to make clear that
4 when I say -- when I'm asking you questions about
5 what you did in this case, I want to refer to your
6 entire team, not just you personally.
7 Is that clear to you? So that when I ask
8 you if you ever did a cash flow analysis, I am
9 talking about anybody on your team with respect to
10 Oakwood.
11 MR. WILLIAMSON: Objection.
12 Q Is my question clear?
13 A I understand your question. I can't --
14 MR. WILLIAMSON: To the extent that he
15 knows.
16 A -- I can't know what everybody did, but I
17 understand your question.
18 Q And so to the best of your knowledge, did
19 anybody on your team ever do a discounted cash flow
20 study as it related to Oakwood?
21 A They might have looked at discounted cash
22 flows.
23 Q And did you ever see such a thing?
24 MR. WILLIAMSON: Let me -- let me
25 interject here, Tony, because we have a -- we have a

18

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 timing issue, and particularly with these broad
3 questions in terms of did anybody ever look at
4 comparable companies or do a discounted cash flow.
5 And prior to service of Dr. Tennenbaum's
6 report, Duff & Phelps served in a consulting capacity
7 to Linklaters on this case.
8 And we object to the disclosure of any
9 information with respect to that consulting capacity.
10 And I just want to make sure that to the
11 extent the witness is answering these questions, that
12 he's not disclosing any information that relates to
13 any of those prior consulting services.
14 MR. CASTANARES: Well, let me respond to
15 this in a couple of ways.
16 Number one, once you designate him to
17 testify, ain't no privilege. Okay. I think that's
18 plainly the law.
19 So if you one time think you had a
20 privilege with him, once you designate him to testify
21 there is no privilege.
22 So you can feel free to instruct this
23 witness as you deem appropriate. But let's make
24 clear the objection you're making.
25 Dr. Tennenbaum's report was served on

19

1 Pfeiffer
2 April 30th of 2007.
3 MR. WILLIAMSON: Correct.
4 MR. CASTANARES: So are you making a
5 temporal distinction as between April 30th of 2007
6 and times after that?
7 MR. WILLIAMSON: The distinction that I'm
8 making is that prior to April 30th Duff & Phelps
9 served in a consulting capacity to Linklaters on this
10 case.
11 We view that consulting relationship as
12 privileged. And to the extent that you ask questions
13 that delve into that, I will instruct the witness not
14 to answer.
15 MR. CASTANARES: All right.
16 MR. WILLIAMSON: To the extent you ask
17 questions that relate to anything having to do with
18 Mr. Pfeiffer's work in rebutting Dr. Tennenbaum's
19 analysis and in his expert report, you're free to ask
20 those questions.
21 MR. CASTANARES: I'd just like to make it
22 clear that it is my position that anything this
23 witness ever did with relation to Oakwood is
24 discoverable, and I intend to have it one way or
25 another. So I will ask the questions that make the

20

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 record, if need be.
3 BY MR. CASTANARES:
4 Q So, sir, speaking as of any time after
5 April 30, 2007, are you aware of any discounted cash
6 flow work done by anybody in your office?
7 A Only as it relates to potentially checking
8 some of the work of Dr. Tennenbaum, but no
9 independent, no independent discounted cash flow was
10 done.
11 Q Okay. And when you say as it relates to
12 checking the work of Dr. Tennenbaum, what did you do,
13 in terms of a discounted cash flow?
14 A Our team may have looked at Tennenbaum's
15 analysis and found errors in the discounted cash
16 flow, as it relates to certain assumptions and so on.
17 Q Did you at any time ever attempt to apply
18 a discount rate that you had derived to a set of
19 future cash flows with relation to Oakwood?
20 MR. WILLIAMSON: Objection.
21 A I don't recall.
22 Q Did you do any discounted cash flow work
23 before April 30th of 2007?
24 MR. WILLIAMSON: Objection.
25 I am going to instruct the witness not to

21

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 answer based on privilege.
3 MR. CASTANARES: Okay.
4 Q Did you do any comparable company analysis
5 related to Oakwood prior to April 30, 2007?
6 MR. WILLIAMSON: Objection. Same
7 instruction.
8 Q Did you do any market data work, that is
9 to say the one that looks at the bond prices and
10 stock prices, related to Oakwood before April 30,
11 2007?
12 MR. WILLIAMSON: Objection. Same
13 instruction.
14 Q Did you do any work related to Oakwood
15 prior to April 30, 2007?
16 MR. WILLIAMSON: I'll let you answer in
17 broad, general terms as to the subject matter --
18 MR. CASTANARES: The question calls for a
19 yes or no.
20 A Yes.
21 Q When did that work begin?
22 A I don't recall the exact date.
23 Q Can you give me any range of times
24 relative to April 30, 2007? Was it about a month
25 before? Was it about a year before?

22

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 A Closer to a year.
3 Q Okay. And who else -- describe for me
4 what you did in that period.
5 MR. WILLIAMSON: Objection.
6 I am going to caution the witness to
7 answer that question, I'll allow you to answer it in
8 terms of the broad, general nature and subject matter
9 of the consulting work that Duff & Phelps did for
10 Linklaters, but beyond that I'll instruct you not to
11 answer.
12 A We were asked to assist in reviewing
13 documents provided in discovery. We were asked to
14 broadly analyze certain financial issues. And to
15 consult on those broad financial issues.
16 Q What were those financial issues?
17 MR. WILLIAMSON: I'll allow you to answer
18 in broad subject matter terms.
19 A Many issues related to the financing of
20 Oakwood, the business of Oakwood, the financial
21 statements of Oakwood, the analysis provided by third
22 parties to Oakwood, and the various issues as it
23 relates to the broader litigation in this case.
24 Q All right. Were you asked at any time in
25 the history of this case or in the history of your

23

1 Pfeiffer
2 involvement with Oakwood to do work which you
3 understood to be designed to yield an expression of
4 an opinion of value on any basis by you?
5 A We were not asked to opine on the
6 expression of value.
7 Q Okay. Were you asked to opine on the
8 question of the solvency of Oakwood at any time?
9 A No.
10 Q Now, have you described to me the steps
11 that the valuation expert goes through in
12 gathering -- in the methodology which consists of
13 gathering stock and bond prices in public markets?
14 Have you told me about that fully?
15 THE WITNESS: I am sorry --
16 MR. WILLIAMSON: Objection.
17 THE WITNESS: -- would you repeat the
18 question.
19 Q Let me rephrase the question.
20 I forgot what you called it, Mr. Pfeiffer,
21 but you referred to one methodology for studying the
22 value of a public company which consisted of
23 gathering data about the market value of its stock
24 and its bonds; is that right?
25 A That's right.

24

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 Q Okay. What's the professional term that
3 you people use for that?
4 A Let's call it market data.
5 MR. WILLIAMSON: Objection.
6 Q Market data.
7 Now, so in the market data approach you go
8 back and find data regarding how much per share the
9 stock was selling for; is that right?
10 A That's part of it.
11 Q Okay. And then you multiply that per
12 share price by the total number of shares
13 outstanding, correct?
14 A That's part of it, yes.
15 Q And you come then to a value of the equity
16 or the stockholder's position in the company; is that
17 right?
18 MR. WILLIAMSON: Objection.
19 A In the case of Oakwood are you asking
20 or --
21 Q I'm asking in general. Does it differ --
22 A In general, it depends on the different
23 classes of equity, but that, yeah.
24 Q In Oakwood's case there was one?
25 A That's right.

25

1 Pfeiffer
2 Q So you would determine the value of equity
3 by looking at how much that one class of stock sold
4 for per share and multiplying it by the total number
5 of shares out there, right?
6 A That's correct.
7 Q Okay. And then you would take a look at
8 the bonds. And in Oakwood's case that was \$3 million
9 worth, is that right, face?
10 A Three million? No. That's not correct.
11 Q What is correct?
12 A Three million dollars worth you said?
13 Q What was the face amount? I'm sorry.
14 Strike that.
15 It was 300 million; is that right?
16 A That's approximately right. Correct.
17 Yes.
18 Q And so the face value of the bonds is
19 \$300 million, but you would gather data as to the
20 market value of those bonds on a specific date; is
21 that right?
22 MR. WILLIAMSON: Objection.
23 A Yes.
24 Q And that would consist of finding out what
25 the bonds were trading for on that date?

26

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 A Yes.
3 Q And there are recognized methodologies
4 within your profession for finding that data out?
5 A Yes.
6 Q So if the bonds were trading at, let's
7 say, 40 and there were \$300 million worth you would
8 assign a value of \$120 million to the public debt
9 position; is that right?
10 A For this approach that would be correct.
11 Q Okay. And then you would now add the
12 total value that you found for the stock outstanding
13 to the \$120 million of bonds outstanding and you'd
14 come to an enterprise value for the company; is that
15 right?
16 MR. WILLIAMSON: Objection.
17 A Again, there may be some other nonpublic
18 debt, but that's part of the methodology.
19 Q All right. And if you wanted then to use
20 that methodology in determining whether the company
21 was solvent or not, you would take the sum of that
22 equity and debt position and compare it to the face
23 value of the company's debt; isn't that correct?
24 A For that methodology, that would be
25 correct.

27

1 Pfeiffer
2 Q All right. So now have we now gone
3 through the steps of that methodology adequately, or
4 I'm missing something?
5 A In terms of the actual science of the
6 methodology, I think you've got it. I think you've
7 got it.
8 Q Okay. And I believe you told me in the
9 comparable company analysis, and I'm sure I am going
10 to do this shorthand but I want to see if I can
11 describe correctly, the basics steps that the
12 valuation professional goes through in the comparable
13 company analysis, it begins with attempting to find
14 companies that the valuation professional considers
15 to be comparable to the subject company in some way;
16 is that correct?
17 A Correct.
18 Q And then one gathers data about those
19 specific companies; is that correct?
20 A Correct.
21 Q And then if those companies have engaged
22 in transactions which are indicative of their own
23 values, such as being sold, one takes into account
24 that data; is that correct?
25 MR. WILLIAMSON: Objection.

28

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 A They could be sold in a transaction for
3 the whole company or sold in the course of market
4 participants selling and buying the stock every day.
5 Q All right. And then having the data about
6 what that company sold for, the valuation
7 professional then makes certain adjustments to that
8 data based upon whatever differences the valuation
9 professional perceives to exist between the
10 comparable company and the subject company; is that
11 correct?
12 MR. WILLIAMSON: Objection.
13 A I'm not sure who this valuation
14 professional is.
15 If you're asking what I do, I could answer
16 that.
17 Q Go ahead.
18 A I may make adjustments, but I typically
19 prefer not to make many adjustments.
20 Q All right. And then one can either --
21 what I'm really trying to ask about is the standard
22 methodology of your profession, which I assume you
23 follow; is that correct?
24 A Yes.
25 Q Okay. So if you do it differently from

29

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 the standard methodology, tell me, but I'm just
3 trying to find out what the valuation professional
4 does in the ordinary course.
5 Am I clear?
6 A Yes.
7 Q Okay. Having made whatever adjustments
8 the valuation professional then feels are
9 appropriate, the valuation professional then derives
10 some multiple of something, either cash flow or
11 EBITDA or profit or something, is that correct, and
12 applies it to the subject company?
13 MR. WILLIAMSON: Objection.
14 A That's correct.
15 Q And thereby derives a value for the
16 subject company; is that right?
17 A For the enterprise.
18 Q All right. And what is the difference
19 between the enterprise and the subject company?
20 A I mean you could have -- I'm just trying
21 to make sure I keep the terms consistent. I mean
22 there are other things you might do, for example I
23 mean you'd have to add debt, you'd have to take
24 out -- you'd have to -- you'd have to analyze the
25 company's cash position, marketable securities.

30

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 There are things you have to do as well.
3 Q Okay. When you do a valuation using the
4 comparable company method, do you value the assets
5 standing alone as if the company had no debt and then
6 compare them to the debt or then add the debt back in
7 later or do you value the assets of the company on
8 the assumption that its existing debt on its balance
9 sheet will continue to exist?
10 MR. WILLIAMSON: Objection.
11 A It's a very -- you're asking a very broad
12 question. I mean if you -- it depends what multiple
13 you're using. You have to be consistent with the
14 methodology. And therefore, if you're using an
15 EBITDA multiple, that is a multiple prior to
16 consideration of debt. If you're using a, you know,
17 net income multiple, then your application of debt
18 would be different.
19 So your question is, is too broad to be
20 answered in the way it was asked.
21 Q Okay. Let me return for a moment if I
22 could to the market data method.
23 In doing the market data method to
24 evaluate assets, is it the practice in your
25 profession to evaluate the assets as if they stood

31

1 Pfeiffer
2 free of debt, or does the value that you find for the
3 assets depend upon the company's debt on its balance
4 sheet?
5 MR. WILLIAMSON: Objection.
6 A I'm not liking the way you characterize
7 the question. I am sorry.
8 Q Let me see if I can ask a better question.
9 Okay.
10 When you do a valuation using the market
11 data approach, you gather the total value of the
12 company's stock outstanding and the total market
13 value of its bonds outstanding, and that gives you
14 something called enterprise value; is that correct?
15 MR. WILLIAMSON: Objection.
16 A I mean that's broadly correct, but there
17 may be other adjustments that need to be made.
18 Q Okay. And when you get to that enterprise
19 value, which I've described broadly, correctly and
20 subject to the adjustments you're talking about, that
21 company has an enterprise value whether its total
22 debt is zero or a billion dollars; isn't that true?
23 MR. WILLIAMSON: Objection.
24 Q That is to say, you're valuing assets as
25 if they were free of debt; isn't that true?

32

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 MR. WILLIAMSON: Objection.
3 A You asked two different questions. If
4 I -- let's take one at a time.
5 Q Yes, please do.
6 A Okay.
7 Q When you're doing the market data approach
8 are you valuing assets as if they were free of
9 debt?
10 MR. WILLIAMSON: Objection.
11 A You're considering the debt and the
12 equity.
13 Q I'm considering the market value of the
14 debt in determining one component of the enterprise
15 value.
16 A Correct.
17 Q But that company that, let's say, had a
18 market value of its debt at \$120 million could have
19 total debt of 120 million or could have total debt
20 of, let's say, the \$300 million outstanding on its
21 bonds or it could have total debt of \$3 billion
22 depending on what other debt it had; isn't that true?
23 MR. WILLIAMSON: Objection.
24 Are we talking about a particular company?
25 You said that company, Tony.

33

1 Pfeiffer
2 A I mean that company in theory could have
3 market value of debt and the face value could be a
4 very different number.
5 Q Okay. So is it fair then to say that the
6 enterprise value you arrive at in this method speaks
7 of the value of the assets as if they were free of
8 debt?
9 MR. WILLIAMSON: Objection.
10 A Again, I don't -- I'm not comfortable the
11 way you're characterizing the question.
12 Q All right.
13 Now let's talk about the discounted cash
14 flow approach to value.
15 Is that a recognized methodology within
16 your profession?
17 A Yes.
18 Q It's one that you have used on various
19 occasions, I take it?
20 A Yes.
21 Q Is it fair to say it's one you use on most
22 occasions when you're evaluating --
23 MR. WILLIAMSON: Objection.
24 Q -- a company?
25 MR. WILLIAMSON: Objection.

34

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 A Yes.
3 Q In fact, is it fair to say that it's very
4 rare that you wouldn't do a discounted cash flow
5 analysis in valuing a company?
6 MR. WILLIAMSON: Objection.
7 A I don't know how to characterize "very
8 rare," but as I said before you typically do a
9 discounted cash flow.
10 Q Okay. Take me through the steps that the
11 valuation professional goes through in doing a
12 discounted cash flow analysis.
13 MR. WILLIAMSON: Objection.
14 A Broadly speaking, irrespective -- we're
15 not talking about Oakwood right now, we are talking
16 about --
17 Q I am just talking about methodology right
18 now.
19 A Because for Oakwood it may be very
20 different.
21 Q Okay.
22 A And it certainly would be -- in general,
23 you know, one has to consider the purpose of the
24 analysis and the situation the company finds itself
25 in.

35

1 Pfeiffer
2 But broadly speaking, a discounted cash
3 flow starts with a projection of future cash flows.
4 Projection of expected cash flows, I should say. And
5 a present value determination of those future cash
6 flows.
7 Q All right. So if the expert is valuing
8 assets as of some date in the past, or valuing the
9 company as of some date in the past, he finds what
10 projected cash flows that company would experience,
11 speaking as of that date in the past; is that
12 correct?
13 MR. WILLIAMSON: Objection.
14 A I don't know what you mean by "would
15 experience."
16 I mean there's a -- there's a -- you would
17 look for the expected future cash flows as of that
18 date in the past.
19 Q Okay. So if I asked you to do a
20 discounted cash flow analysis for a company, say,
21 starting as of three years ago, in order to find its
22 expected cash flows would you just go look to see
23 what's happened in the last three years?
24 MR. WILLIAMSON: Objection.
25 Q Or would you do something else?

36

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 MR. WILLIAMSON: Objection.
3 A I would do something else.
4 Q What else would you do? Strike that.
5 Why wouldn't you just look at what
6 happened in the last three years? You know for sure
7 then, don't you?
8 A Because as I explained, the exercise
9 begins with looking at expected future cash flows as
10 of that date.
11 Q Okay. So you have to look as of that date
12 rather than simply with hindsight from now; is that
13 correct to say?
14 A That's correct.
15 Q Okay. And this set of projected cash
16 flows would say that as of the date of valuation,
17 let's say three years ago today, this company
18 expected to have cash flows of X, Y and Z in the next
19 several years; is that right?
20 MR. WILLIAMSON: Objection.
21 A I'm not sure what the question is.
22 Q Okay. The discounted cash flow analysis
23 consists of determining as of the date of valuation
24 what expected future cash flows would be; is that
25 correct?

37

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 THE WITNESS: Could you repeat the

3 question, please.

4 Q I'll repeat the question.

5 The discounted cash flow analysis begins

6 with determining what predicted future cash flows

7 would be, speaking as of the date of valuation,

8 correct?

9 MR. WILLIAMSON: Objection.

10 A It doesn't -- the way the question's been

11 asked, the answer would be no.

12 You wouldn't just determine what was

13 predicted. You determine the expected cash flows as

14 of that date. Not predicted cash flows.

15 Q So your difference with me is the use of

16 the word "expected" versus predicted?

17 A Primarily, yeah.

18 Q Okay. So you would determine what cash

19 flows were expected to come in as of the date of

20 valuation as your principal step; is that correct?

21 MR. WILLIAMSON: Objection.

22 A That is one of your steps, yes.

23 Q And the cash flow means money coming in

24 and out; is that right?

25 A That's a very technical definition you

38

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 have there. But -- that's not, that's not a very --

3 that's not a finance definition, but it's cash flow

4 means cash flowing --

5 Q Okay.

6 A -- so in and out, yes.

7 Q What you're attempting to determine is

8 what, how much money is expected to come into this

9 company at certain times in the future versus how

10 much money is going to go out of this company at

11 certain times in the future; is that right?

12 MR. WILLIAMSON: Objection.

13 A That's right.

14 Q And after you have made that study or that

15 determination, then the next step is to find the

16 present value of those expected cash flows; is that

17 correct?

18 MR. WILLIAMSON: Objection.

19 A Yes.

20 Q And that is because a dollar a year from

21 now isn't the same, doesn't have the same value as a

22 dollar today; is that right?

23 A Right.

24 Q So if a company's predicted to or expected

25 to bring in positive cash flow of \$100 a year from

39

1 Pfeiffer

2 now, a year from today, the valuation professional

3 would attempt to determine how much that money a year

4 from today is worth today; is that right?

5 MR. WILLIAMSON: Objection.

6 A I would say it differently.

7 Q Sorry?

8 A I would say it differently.

9 Q Say it differently then, please.

10 A I knew you'd ask that.

11 Q I'm not a professional so I just do my

12 best muddling through here.

13 A You're a professional, just not a

14 valuation professional.

15 Q There you go.

16 A I would say that the expected cash flow a

17 year from today has to be valued in today's present

18 value terms.

19 Q And how does the valuation professional go

20 about determining what an expected cash flow a year

21 from today is worth in today's value terms?

22 MR. WILLIAMSON: Objection.

23 A Well, if it's a debt-free cash flow, one

24 would look at the weighted average costs of capital

25 of the company.

40

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 Q And what would looking at the weighted

3 average cost of capital tell the valuation

4 professional? Let me just ask a further question.

5 Looking at the weighted average cost of

6 capital, you as a valuation professional are trying

7 to derive a discount rate; isn't that correct?

8 A Correct.

9 Q And the discount rate is the method by

10 which you evaluate how much money \$100 a year

11 interest today is worth in today's terms; isn't that

12 right?

13 MR. WILLIAMSON: Objection.

14 A In the context of that company's expected

15 cash flows.

16 Q Okay. So in the context of that company's

17 expected cash flows, if you had a discount rate of

18 10 percent you would say that \$100 a year from today

19 is worth \$90 today, correct?

20 A Correct.

21 Q And the cash flows that are being studied

22 in the discounted cash flow analysis consist of

23 essentially two things; am I correct? First is the

24 cash flows that are expected from the company's

25 continued operations during the period under study;

41

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

and the second is the value of the company expressed as sometimes called terminal value when the period under study concludes --

MR. WILLIAMSON: Objection.

Q -- is that correct?

MR. WILLIAMSON: Objection.

THE WITNESS: If you could read back the question, please.

(Question read.)

MR. WILLIAMSON: Same objection.

A There typically is a period of cash flows that is explicitly projected as expected cash flows and a terminal value. There are certain situations where there is no terminal value and you project out the cash flows until you believe that they will not exist anymore or don't need to be projected anymore. But the expected cash flow period and then there's an expected terminal value.

Q All right. And at the conclusion of that then, you conclude that the present value, speaking as of the valuation date, of all of the expected cash flows of this company is a certain figure; is that right?

MR. WILLIAMSON: Objection.

42

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

A Yes.

Q Okay. And that allows you to reach conclusions about what an investor would pay for those future cash flows; is that right?

MR. WILLIAMSON: Objection.

Q As a matter of fact, that's exactly what -- when we talk about the value, the present value of those future cash flows, what we're talking about is how much an investor would pay for the right to receive those future cash flows; is that right?

A It's a -- it's a giant leap to that step.

You have to do a lot more work to determine whether the discounted cash flow value itself is the price that one would pay.

Q What other work does one do to determine that?

A Well, first and foremost, you would do other methodologies, not just discounted cash flow methodology.

Q So you would do the comparable company analysis and --

A The market data analysis, the asset approach, which is to look asset by asset, what I would call a balance sheet or net asset approach.

43

Pfeiffer

Again, like I mentioned before, there's potentially, you know, real option analysis or contingent claim analysis. There's looking at contemporaneous information. So there's a lot of things you would do, you know, in addition to looking at the company's situation in terms of its liquidity and its level of distress. Whether there are other companies in the industry that may or may not be interested in buying this company. Whether you'd expect synergies. Whether you'd expect a discount for lack of marketability. Whether you'd expect a control premium. There's many other factors that have to be considered before you determine that a particular analysis leads you to the price that someone would pay.

Q Does the valuation professional take into account such things as control premium, expected synergies, and the things you've just mentioned in the course of doing a discounted cash flow analysis?

MR. WILLIAMSON: Objection.

A I'm not really sure how to answer that question. I mean I don't -- I don't know what -- I mean those things are considered in your valuation analysis. I'm not sure what you're asking.

44

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

Q Well, is it standard practice within your profession, sir, to take those things into account in determining a discount rate?

A No.

Q Now, you mentioned that in Oakwood's case there may be some differences from the standard practice in discounted cash flow.

Describe them, please.

MR. WILLIAMSON: Objection.

A Oakwood's cash flows, expected cash flows, may be negative in the short term. And they may or may not be predicted or expected to be turning positive in the long term.

And one would need to carefully analyze the time horizon and the expectations with regard to the company's change from a company losing cash to a company potentially getting to a stable state.

There also may be various considerations with respect to the company's level of distress, sale of assets, change in business.

The company may or may not have a terminal value, because it may decide to exit the business or exit certain components of the business at various points in time, or sell the business at points in

45

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 time.
3 There may be adjustments that need to be
4 made to the working capital model, to the company's
5 ability to spend on various marketing and other
6 capital expenditure programs. And there may be some
7 scenario planning, meaning you might need to do
8 various cases projections, a downside, an upside,
9 reflecting the various different possible scenarios
10 the company has in front of them.
11 Q These would lead you to study different
12 projections from the original ones studied in the
13 discounted cash flow study?
14 MR. WILLIAMSON: Objection.
15 A This would lead you to broaden the way
16 you'd look at the cash flows from the standard just
17 take prospective cash from methodology that we
18 described before.
19 Q So you would, in just going through the
20 steps as methodology, you would adjust, you would
21 make adjustments to the projections of expected cash
22 flows?
23 A No.
24 You'd have to do a lot more further
25 analysis.

46

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 Adjustment is a broad term that could mean
3 anything.
4 I'm saying you have to consider all the
5 various scenarios and all the various options, and
6 whether the company would be a going concern at
7 various points in time. And as I described earlier,
8 you'd make, you'd have to consider a lot of different
9 factors, particularly if the company's in distress.
10 You'd have to consider that. In addition to the fact
11 you'd have to be very careful to analyze the expected
12 projections relative to historical performance,
13 relative to other contemporaneous observers' belief
14 with respect to the future of the industry and some
15 of the competitors' outlook on the industry, analysts
16 and so on. You'd have to take a much more careful
17 look at the projections before using them in any kind
18 of model.
19 Q And did you do that in this case, you or
20 your associates?
21 A I was not asked to. No.
22 Q So to the extent that your associates, you
23 or your associates ever ran any cash flow, discounted
24 cash flow studies, you didn't go through all the
25 steps you just described?

47

1 Pfeiffer
2 MR. WILLIAMSON: Objection.
3 Q Is that correct?
4 A I don't recall if my team ever did such an
5 analysis. But if they did do an analysis like that
6 and if they were asked to do a discounted cash flow
7 analysis, that's what I would have -- that's what I
8 expect they would have done.
9 Q Okay. And was Oakwood in distress at any
10 time that you examined it?
11 MR. WILLIAMSON: Objection.
12 Q As you use that term.
13 A Yes.
14 Q Was it in distress, as you use that term,
15 at all times that you examined it?
16 A No.
17 Q What -- when did it change?
18 MR. WILLIAMSON: Objection.
19 A I have not formed a -- I have not formed
20 an expert opinion as to when the company turned into
21 a distressed company.
22 Q What is the basis of your statement that
23 at some time it was not in distress and at some other
24 time it was?
25 A My basis is that it's my impression that

48

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 in the mid nineties the company was not in distress.
3 Q Was it in distress in all of 2001, to the
4 extent that you looked at the company in 2001?
5 A I have not reached a conclusion on that.
6 Q How about 2002?
7 A I would say yes.
8 Q Okay. How about 2000?
9 A I have not reached a conclusion on that.
10 Q Was it in distress for all of 2002?
11 A I would say it was in various levels of
12 distress at various points in time 2002.
13 Q Was it at any level of distress at any
14 point in time in 2001?
15 MR. WILLIAMSON: Objection.
16 A It likely was.
17 Q What do you mean by distress?
18 A I mean a company that has to consider its
19 liquidity, consider its cash flow situation, and must
20 consider those issues before conducting business in a
21 normal fashion.
22 Q And when you say consider them, what do
23 you mean by that?
24 A Meaning you've got a treasurer and a
25 finance, set of finance professionals who are

49

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 considering the company's actions relative to their
3 cash position.
4 Q And what -- when you say relative to their
5 cash position, what do you mean?
6 A I am sorry?
7 Q When you say relative to their cash
8 position, tell me what you mean by that.
9 A I mean the company has to maintain a
10 certain amount of liquidity, and it has to be able to
11 pay its debts, and it must consider those issues.
12 Q And what kind of things do those people
13 that you described, the treasurer, et cetera, have to
14 consider in terms of conducting its business relative
15 to its cash position?
16 MR. WILLIAMSON: Objection.
17 A It must consider its financing programs.
18 It must consider its change in business operations.
19 It must consider its collection policies, its payment
20 policies, and many other factors.
21 Q And these are factors that arise when the
22 company comes into distress?
23 A Certainly those issues are considered
24 prior to a company going into distress, but in
25 particular when a company faces those issues on a

50

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 daily basis and with an increased level of attention,
3 it becomes more of a -- more of a focus, more of a
4 consideration.
5 Q Did you ever attempt to, you or anybody on
6 your staff that is, ever attempt to create a set of
7 projections for Oakwood as of any date in the past
8 upon which to base a discounted cash flow study?
9 MR. WILLIAMSON: Objection.
10 A I don't recall. I don't know. Not I
11 don't recall. I don't know.
12 MR. WILLIAMSON: Tony, when you get to
13 a --
14 MR. CASTANARES: This is convenient.
15 MR. WILLIAMSON: -- we could take a break?
16 MR. CASTANARES: Take a short break.
17 THE VIDEOGRAPHER: The time is 10:37 a.m.,
18 we are off the record.
19 (A recess was taken.)
20 THE VIDEOGRAPHER: The time is 10:51 a.m.,
21 you're on the record.
22 BY MR. CASTANARES:
23 Q Mr. Pfeiffer, at any time did you or your
24 team study a comparison between the value of
25 Oakwood's assets at one point in time in the past and

51

1 Pfeiffer
2 another point in time in the past?
3 MR. WILLIAMSON: Objection. And, Tony, I
4 am just going to say this just so that it's on the
5 record. We've already had our discussion about the
6 temporal issue with respect to the consulting
7 relationship, and Mr. Pfeiffer's going to answer
8 questions with respect to the work that was done
9 post-April 30th. And I realize you're asking those
10 broad questions but --
11 MR. CASTANARES: Let's keep our record
12 clear then. And I am just doing this as a favor to
13 you I think.
14 Q At any time on or after April 30, 2007 did
15 you or your team compare the value of the assets of
16 Oakwood on one date in the past to the value of the
17 assets of Oakwood on another date in the past?
18 A As it relates to Dr. Tennenbaum's report,
19 yes.
20 Q Did you ever do so before April 30, 2007?
21 MR. WILLIAMSON: Objection.
22 I am going to instruct the witness not to
23 answer.
24 Q Tell me what you did in connection with
25 comparing Oakwood's asset value at one date in the

52

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 past and at another date in the past as it relates to
3 Dr. Tennenbaum's report.
4 A Well, Dr. Tennenbaum, broadly speaking,
5 compares the value of the assets at different dates.
6 And so we looked at his conclusions and
7 found problems with his conclusion, and looked at
8 alternative approaches and, as you know, we looked at
9 the market value, public market value of the assets
10 at various dates.
11 Q All right. I may have asked perhaps too
12 broad a question.
13 I recognize that you performed some
14 criticism of what Dr. Tennenbaum did. And my
15 question wasn't designed to ask you about that right
16 yet. Rather, I'm asking you if you or your team
17 performed your own study of the value of Oakwood's
18 assets comparing any two points in time in the past.
19 MR. WILLIAMSON: Post-April 30th.
20 Post-April 30th.
21 A We looked at the market values, as written
22 in my report. And did other analysis, as written in
23 my report. But didn't arrive -- we did not arrive at
24 any final conclusion relative to the market values of
25 Oakwood and at various times in the past.

53

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 Q Okay. Now, I believe you told me that you

3 were first engaged in this matter about a year or so

4 before April 30th of 2007; is that right?

5 MR. WILLIAMSON: Objection.

6 A I think what I said was it's closer to a

7 year than it is a month.

8 Q Okay.

9 A But it was not a year. It was potentially

10 more than that.

11 Q It was more than a year?

12 A It might have been more -- I don't recall,

13 but it might have been more than a year.

14 Q Well, in the period that you have been

15 engaged in the matter has the nature of your

16 assignment changed in any way?

17 MR. WILLIAMSON: Objection.

18 A Yes.

19 Q Describe.

20 A I believe initially we were asked to

21 broadly look at many aspects of the case, of the

22 matter, and look at a broad set of documents that

23 were provided in discovery. And post-April 30th our

24 role was really focused on the expert report of

25 Dr. Tennerbaum and our views with respect to that

54

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 report.

3 Q Did you ever understand at any time that

4 your assignment included opining on the value of

5 Oakwood at any point in the past?

6 MR. WILLIAMSON: Objection.

7 Be careful with the difference between

8 consulting relationship and the post-April 30th

9 relationship.

10 MR. CASTANARES: I'll make clear I'm

11 asking ever.

12 MR. WILLIAMSON: I know, that's why I am

13 instructing the witness.

14 A We -- we were never asked to opine on the

15 value of Oakwood at any point in time.

16 Q All right. Were you ever asked to prepare

17 any studies that might be preliminary to your opining

18 on the value of Oakwood at any point in the past?

19 MR. WILLIAMSON: Objection. Same

20 instruction.

21 THE WITNESS: Could you repeat the

22 question, please.

23 MR. CASTANARES: Would you read it back,

24 please.

25 (Question read.)

55

1 Pfeiffer

2 MR. WILLIAMSON: You could answer the

3 question with respect to your post-April 30, 2007

4 engagement.

5 A Certainly post-April 30, 2007 we were not

6 asked to do that.

7 Q Before April 30th of 2007 were you asked

8 to perform any studies that would be preliminary

9 toward the rendition of an opinion of the value of

10 Oakwood at any time in the past?

11 MR. WILLIAMSON: Objection.

12 I instruct the witness not to answer on

13 the grounds of privilege.

14 Q I show you, sir, a document previously

15 marked as Exhibit 2624.

16 MR. CASTANARES: I gave Mary a copy the

17 other day. I don't know -- it's not in that bundle

18 (indicating). Let me ask -- I didn't bring yet

19 another copy because I already gave Mary one copy a

20 couple of days ago.

21 Q But do you recognize the handwriting here,

22 sir?

23 A I do.

24 Q Is it yours?

25 A Unfortunately, it is.

56

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 Q Are these notes that you took in the

3 course --

4 A I say unfortunately because it is not very

5 good handwriting, not because of the content of it.

6 Q Are these notes that you took in the

7 course of a telephone conversation?

8 A I don't recall if it was a telephone

9 conversation or a meeting, but they're my notes.

10 Q Whether it was a telephone conversation or

11 a meeting, describe all persons present, please, or

12 identify them.

13 MR. WILLIAMSON: Objection.

14 A My understanding is that this is a note

15 pad that has pages that were written on different

16 dates, and unfortunately the dates are not on the

17 notes. And for a variety of reasons therefore I

18 don't recall who was with me and who attended the

19 conversation or the meeting.

20 Q All right. So is it your testimony that

21 not all of the notes that comprise Exhibit 624 were

22 taken at the same time?

23 A Yes.

24 Q All right. Let me ask you to refer to the

25 first page of this, and I am going to use page

57

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 numbers here using the Bates numbers in the lower
3 right-hand corner, 521703 being the first.
4 Do you see that?
5 A Yes, I do.
6 Q Okay. Looking at that page, I see right
7 in the center of the page "2002 no longer in finance
8 business."
9 What did you mean by that?
10 A I meant that in 2002 the company, Oakwood,
11 took steps to exit components of the finance
12 business.
13 Q And is that something that someone told
14 you or is that something that you knew already when
15 you wrote these notes?
16 A Something I knew already.
17 Q All right. And what did you know about
18 that?
19 A I can't tell you exactly what I knew when
20 I wrote this note, but I knew that they were making
21 steps to rationalize their business and to exit
22 certain businesses as they prepared to file for
23 bankruptcy.
24 Q And what particular steps did you know
25 them to have taken in 2002 to exit the finance

58

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 business?
3 A Just what I told you. That they would
4 change the way they did -- they conducted business as
5 relates to the financing portion of their business.
6 Q All right. Let me ask you to turn the
7 page to the page that's 704 in the lower right-hand
8 corner.
9 And you see here a reference on the third
10 line, it looks like it says "01/02 market is
11 sufficient for 8 1/8 and 7/7" something.
12 Do you see what I'm referring to?
13 A Yes.
14 Q Can you read it?
15 A "01/02 market is sufficient for 8 1/8 and
16 7 7/8."
17 Q And do those refer to Oakwood's two bond
18 issues?
19 A Yes.
20 Q And when you say sufficient, do you mean
21 that they were sufficient data available to find out
22 the bond prices on specific dates?
23 MR. WILLIAMSON: Objection.
24 A No, that's not what I meant.
25 Q What did you mean?

59

1 Pfeiffer
2 A I meant that there was a sufficient market
3 for these bonds.
4 Q Sufficient for what purpose?
5 A For purposes of determining that there was
6 an active market, that there were prices, the prices
7 available, there was volume on these bonds.
8 Q Were you saying, sir, that the data was
9 sufficient in order for you to perform the public
10 debt portion of what you've called a market data
11 analysis?
12 MR. WILLIAMSON: Objection.
13 A Yes.
14 Q Right. And you knew that already as of
15 the time you made these notes, or was somebody
16 telling you this that you were writing down?
17 A It was a discussion about making sure
18 there was a sufficient market. And I wrote in my
19 notes that there was a sufficient market.
20 Q My question to you is, is that something
21 somebody said to you in the course of this meeting
22 that you chose to write down or is it something you
23 knew already and you just memorialized here?
24 MR. WILLIAMSON: Objection.
25 A It's something that I knew already, but I

60

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 confirmed after discussions with my team. This was,
3 as I recall now sitting here, this was a discussion I
4 had with my team.
5 Q All right. And who was your team?
6 A At this exact date or in general?
7 Q As of the time you made these notes.
8 A My team was Aijun Besio.
9 Q Could you spell these names for the
10 reporter as you go by, too.
11 A I could try but I'm not sure --
12 Q Well, we have them elsewhere. I'll get
13 them for her. I have them.
14 A All right. A-I-J-U-N, I believe
15 B-E-S-I-O.
16 The other members of my team included --
17 sorry -- Adam Warren, Michael Vitti, and I had other
18 staff members who helped me at times, including
19 John Goldblatt, and my paralegal, Nicole Patterson.
20 Q Okay. And who was Aijun? What was her
21 role?
22 A Aijun is a vice president. And her role
23 was to help me to prepare the various issues I needed
24 preparation for purposes of this expert report.
25 Q All right. And she's somebody senior in

61

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 the organization to you or junior or equal?
3 A She's junior to me.
4 Q Is there anybody on your team in this
5 matter that was senior to you?
6 A No.
7 Q All right. Lower on this page 704 I see
8 "Shapiro September 01/ 230 value."
9 What is that reference, please?
10 MR. WILLIAMSON: Objection.
11 A That references the fact that in Shapiro's
12 report he ascribes a value of 230 million as of
13 September '01.
14 Q And was that value based upon a market
15 data analysis?
16 A It was intended -- it was intended by
17 Shapiro to do, broadly speaking, a market data
18 analysis, yes.
19 Q He derived that figure by adding up the
20 market value of the company's stock on that date and
21 the market value of the company's bonds on that date
22 based upon the data he had; is that correct?
23 MR. WILLIAMSON: Objection.
24 A That's correct.
25 Q Do your studies lead you to differ with

62

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 that figure?
3 A I can't specifically -- I can't speak
4 specifically to that figure, and I'm not even sure if
5 this exact figure is exact. But our studies did, did
6 differ a bit with Shapiro's.
7 Q And did they differ with him as to what
8 the stock price was?
9 A I believe -- I don't believe so.
10 Q Did they differ with him as to what the
11 total number of shares outstanding was?
12 A I don't believe so.
13 Q So as to the equity component of the
14 market data analysis, would it be fair to conclude
15 that your studies didn't differ?
16 MR. WILLIAMSON: Objection.
17 A As far as I remember, I don't think we --
18 I don't -- I'm not sure that we didn't find an error
19 in his numbers, but I don't recall finding an error.
20 Q All right. And did you differ from
21 Dr. Shapiro in your assessment of what the total face
22 value of all the bonds outstanding was?
23 MR. WILLIAMSON: Objection.
24 A I don't recall.
25 Q Three hundred million, is that a number

63

1 Pfeiffer
2 that you know?
3 MR. WILLIAMSON: Objection.
4 A Again, you know, approximately
5 300 million.
6 Q And did your studies differ from
7 Dr. Shapiro, speaking as of September '01, on the
8 market value of Oakwood's bonds?
9 MR. WILLIAMSON: Objection.
10 A As I said a few minutes ago, you know, I
11 don't recall specifically as to whether our number
12 differed from Dr. Shapiro's as of September '01, but
13 we found various differences in the data that we had
14 versus the data that he had.
15 Q Do you have any reason to doubt that
16 Dr. Shapiro had the data he had?
17 MR. WILLIAMSON: Objection.
18 A I have no reason to doubt that Dr. Shapiro
19 had the data he had.
20 Q That data was derived from JPMorgan; is
21 that correct?
22 MR. WILLIAMSON: Objection.
23 A That's what Dr. Shapiro contends, yes.
24 Q And you have no reason to doubt that
25 Dr. Shapiro fabricated this evidence and that it

64

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 really wasn't JPMorgan's evidence, do you?
3 A No.
4 MR. WILLIAMSON: Objection.
5 Q You were unable to get the JPMorgan data,
6 right?
7 A I believe that we did not obtain the
8 JPMorgan data.
9 Q So you went out and looked for other data,
10 right?
11 A We instead looked for actual trading data.
12 Q Okay. And did you find any?
13 A Yes.
14 Q Were you able to arrive at bond prices for
15 Oakwood's two issuances on specific dates in the
16 past?
17 A Yes.
18 Q Did that include September 30, 2001?
19 A Yes.
20 Q What price did you find for those bonds?
21 A I don't recall off the top of my head.
22 I'd have to look at my work papers.
23 Q At your work papers?
24 A I'd have to look at the documents provided
25 to you in support of my report.

65

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 Q All right. We'll get to this point later,

3 but I am going to ask you to do that. So maybe --

4 I've got a lot of documents here, I hope we'll be

5 able to short-circuit it, if you could help me decide

6 which ones to look at. Okay. So let's come back to

7 that issue.

8 At page 705 of this document, Exhibit 624,

9 there is a note that says "Assumes going concern,"

10 that looks like about the eighth or ninth line down

11 there, referring to apparently Dr. Tennenbaum's, it's

12 under "Compares apples to apples."

13 Do you see that?

14 A Yes.

15 Q And what does the "assumes going concern"

16 refer to?

17 A That Dr. Tennenbaum assumes a going

18 concern.

19 Q Is that a -- was that a correct assumption

20 to make as of September of '01?

21 MR. WILLIAMSON: Objection.

22 A I'm not sure -- if you can clarify your

23 question.

24 Q Do you differ with Dr. Tennenbaum's

25 assumption of going concern as of September '01?

66

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 A For the purposes of his analysis and his

3 contention and his theory of damages as I read it, I

4 differ with him, yes.

5 Q Okay. And so what is the alternative to

6 making a going concern assumption? What is the other

7 assumption or what are the other assumptions that one

8 might make if one didn't assume a going concern?

9 A You would assume a non-going concern.

10 Q You would assume a liquidation, correct?

11 MR. WILLIAMSON: Objection.

12 A That's one of the alternatives is as a

13 non-going concern, yes.

14 Q What are the other non-going concern

15 alternatives besides liquidation?

16 A Well, you can liquidate part of your

17 business or sell part of your business and continue

18 to operate other parts.

19 Q And the parts that you operated, would you

20 then consider to be a going concern?

21 MR. WILLIAMSON: Objection.

22 A Depending on the hypothetical scenario you

23 might consider it a going concern.

24 Q What about the parts that you sold off on

25 other than liquidation basis, would you consider

67

1 Pfeiffer

2 those a going concern?

3 A No.

4 MR. WILLIAMSON: Objection. Sorry.

5 Q So just so I have things clear, it is your

6 testimony that it is incorrect to assume a going

7 concern for Oakwood in September of 2001; is that

8 correct?

9 MR. WILLIAMSON: Objection.

10 A I didn't say that, no.

11 Q Well, what is the correct assumption to

12 make about going concern in 2001 for Oakwood?

13 A My opinion related to Dr. Tennenbaum's

14 report. And the conclusion I reached with regard to

15 September 30, 2001 was that given the basis of his

16 opinion that the company should not have continued to

17 operate its business in the way it was operating it

18 as of September 2001, my opinion is that his going

19 concern premise therefore is faulted in that

20 analysis.

21 Q Now are you saying that the company -- is

22 it your opinion the company should have continued to

23 operate in the way it was operating in September 2001

24 or should not have done so?

25 MR. WILLIAMSON: Objection.

68

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 A I have not been asked to form an opinion

3 on that.

4 Q And you don't have any based upon what

5 you've looked at?

6 A No.

7 Q Okay. And are you therefore saying that

8 if it was incorrect for Dr. Tennenbaum to assume a

9 going concern in September 2001, let me ask you, sir,

10 what assumption he should have made in your opinion?

11 MR. WILLIAMSON: Objection.

12 A He should have been consistent, and if he

13 is saying that the company should have filed for

14 bankruptcy in September of 2001, he should have

15 valued the company as if it was going to file for

16 bankruptcy in September 2001.

17 Q And is it your testimony that he did not?

18 A My testimony is that the way, the method

19 in which he conducts his valuation is not consistent

20 with a liquidation scenario.

21 Q Do you understand Dr. Tennenbaum's report

22 as saying that the company should have been

23 liquidated in 2001?

24 A Not necessarily.

25 Q Okay. You understand his saying that if

69

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 the company had gone into bankruptcy in 2001 as
3 distinguished from 2002 it would have received better
4 value for its assets, don't you?
5 MR. WILLIAMSON: Objection.
6 A I understand his report and deposition to
7 be saying that, yes.
8 Q And he was assuming for the purposes of
9 his study a going concern both in 2001 and 2002,
10 wasn't he?
11 MR. WILLIAMSON: Objection.
12 A The way his model is performed, there's an
13 inherent assumption of a going concern as of those
14 two dates. What he had in his head I can't tell you.
15 But the model presumes a going concern as of those
16 two dates.
17 Q Do you ever -- have you ever in your life
18 performed a valuation of a company in bankruptcy
19 other than on a liquidation basis?
20 A Yes.
21 Q Okay. So is it therefore correct for me
22 to conclude that the fact that a company is going
23 into bankruptcy does not necessarily conflict with an
24 assumption that its assets should be valued as a
25 going concern?

70

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 MR. WILLIAMSON: Objection.
3 A If one assumes that the company was to
4 file for bankruptcy, one should consider the
5 possibility is the company is not a going concern.
6 Q All right. And is it your testimony that
7 Dr. Tennenbaum failed to consider that?
8 A My testimony is that his model allows me
9 to make the assumption that he did not consider that.
10 Q You actually as you're sitting here don't
11 know whether he considered and rejected that premise
12 or failed to consider it, do you?
13 A I only know what he said in his deposition
14 about that subject.
15 Q Okay. If I asked you, sir, to evaluate
16 the assets of United Airlines today, would you value
17 them on a liquidation basis?
18 MR. WILLIAMSON: Objection.
19 A United Airlines is already in bankruptcy.
20 Q Right. That's why I chose that as an
21 example.
22 A And the company has made certain
23 determinations as to what they plan to do going
24 forward. And I'm not privy to all those
25 determinations.

71

1 Pfeiffer
2 But I would, I would value it as of today
3 based on the expectations for the company and its
4 cash flows and its predicament and its liquidity and
5 its scenario as of today.
6 Q You would value it today as a going
7 concern, would you not, sir?
8 A If it's intended that the company will
9 emerge as a going concern, then I would value it as a
10 going concern, allowing for all the various
11 bankruptcy costs and all the other issues that
12 result, you know, that resulted with a company in
13 bankruptcy.
14 Q And did you have any knowledge of what the
15 intentions of Oakwood were as to whether it would
16 continue to operate as a going concern in September
17 of '01?
18 A Yes.
19 Q What were its intentions?
20 A It was operating as a going concern, and
21 Myles Standish in his deposition stated that his
22 intention was to operate as a going concern.
23 Q Was that also true in 2002?
24 A At what date?
25 Q September 30th.

72

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 A No.
3 Q Your testimony is that the company
4 intended to liquidate as of that time?
5 MR. WILLIAMSON: Objection.
6 A My testimony is as of September 30, 2002
7 the company was considering a number of
8 reorganization options that included a potential form
9 of liquidation.
10 Q When the company was sold to Buffett in
11 late 2003 was it sold as a going concern, sir?
12 MR. WILLIAMSON: Objection.
13 A It was sold as a reorganized and somewhat
14 different going concern.
15 Q Okay. It wasn't sold as a liquidation; is
16 that right?
17 MR. WILLIAMSON: Objection.
18 A It wasn't sold as a liquidation, but I
19 recall that portions of the business and the assets
20 were sold in liquidation -- or in liquidation mode,
21 in distressed mode.
22 Q All right. But the basic operating assets
23 were sold to Buffett as a going concern?
24 MR. WILLIAMSON: Objection.
25 A Again, throughout 2001 and 2002 there were

73

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 times where the company was acting in distress mode,

3 and sold off businesses or assets or made deals with

4 respect to its securitization in a mode which was not

5 consistent with a complete going concern, it had

6 liquidated some forms of their business platform.

7 Q What were those?

8 A It cut certain deals with regard to

9 securitization that it might not have if it didn't

10 need the cash.

11 Q Those were the sale of the B2 guarantees

12 to Buffett?

13 A That's one example, yes.

14 Q Anything else?

15 A Their general business decisions seemed to

16 be made with an emphasis on cash.

17 Q And that tells you that the company was

18 not intending to operate as a going concern?

19 MR. WILLIAMSON: Objection.

20 A No.

21 It tells me that the company was operating

22 in a form of distress.

23 Q All right. And how does that relate to

24 the question that I asked you, which is, which

25 related to a going concern?

74

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 A It relates because when you provide a

3 valuation opinion there's clear going concern and

4 there's clear liquidation, but there are certainly

5 many avenues in between. And this company was

6 conducting itself and, you know, conducting business

7 and continuing to operate, but was operating in a

8 different capacity than it had been in the prior --

9 in the years before that.

10 Q All right. Looking again at page 705 of

11 Exhibit 624, sir. I see an asterisk down toward the

12 bottom, it says "Speak to Chanin," C-H-A-N-I-N, "re

13 restructuring assignments done for going concern."

14 Have I read that handwriting correctly?

15 A Yes, you have.

16 Q Who is Chanin?

17 A Chanin is the -- is the restructuring

18 group that Duff & Phelps owns.

19 Q I see. And how is Chanin involved in this

20 case?

21 A Chanin is a resource that I have at my

22 disposal because they're part of our firm.

23 And so if I have a question relating to

24 restructuring advice in particular, I can reach out

25 to them to ask them any questions I'd like.

75

1 Pfeiffer

2 Q I notice in a number of the documents that

3 you have furnished to us the term "Daubert,"

4 D-A-U-B-E-R-T, appears.

5 Is that a term familiar to you?

6 A Yes.

7 Q What does it mean to you?

8 A It means -- it's a motion to put in front

9 of the Court to challenge the qualifications or

10 methodologies of a particular expert.

11 Q Part of your assignment in this case

12 involved the support of such a motion, isn't that

13 correct, with respect to Dr. Tennenbaum?

14 A Correct.

15 Q Now I recognize that you differ with his

16 methodologies and conclusions.

17 Do you have any quarrel with

18 Dr. Tennenbaum's qualifications as an expert --

19 MR. WILLIAMSON: Objection.

20 Q -- on the subjects that he purports to

21 opine on in his report?

22 MR. WILLIAMSON: Objection.

23 A I have not been asked to opine. I haven't

24 studied that.

25 Q Okay. Did you talk to anybody in

76

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 connection with the information you gathered on your

3 assignment or assignments in this case other than

4 either lawyers or members of your own team?

5 Did you interview anybody?

6 A The question is quite broad. I --

7 Q Fiachra O'Driscoll.

8 A I am sorry?

9 Q O'Driscoll, did you interview him?

10 A I personally did not.

11 Q Felt?

12 A I personally did not, no.

13 Q Did anybody on your team interview any of

14 those people?

15 A I don't recall.

16 Q Did anybody on your team interview

17 anybody?

18 A I don't recall.

19 Q Did anybody on your team talk to anybody

20 that had anything to do with this case other than

21 lawyers?

22 A I don't recall.

23 Q You know that you didn't, though, right?

24 Isn't that right?

25 A Not that I remember sitting here today

77

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 but...
3 Q Okay. You didn't talk to anybody at
4 Oakwood?
5 A Sitting here today, I don't -- I don't
6 recall talking to anybody at Oakwood.
7 Q Okay. You didn't talk to anybody at
8 Davidson?
9 A Again, sitting here today, I don't recall
10 talking to anybody at Davidson.
11 Q You did read some depositions or portions
12 thereof, sir?
13 A Yes.
14 Q When you read deposition testimony did you
15 read the full depositions or just certain pages of
16 them?
17 A I reviewed the full deposition in certain
18 instances and I read pages of them in other
19 instances.
20 Q In the instances -- how did you decide
21 which depositions to use, to read all of and which to
22 read only pages of?
23 A If the topic was important for me to read,
24 I read it. If it wasn't, I didn't read it.
25 Q And as to those depositions that you

78

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 didn't read certain pages of, how do you know there
3 weren't topics in there that would be important for
4 you to read?
5 A I only know that based on the members of
6 my team that may have read it and advised me as to
7 its importance.
8 Q As to those depositions that you chose to
9 read only certain pages of, do you know for a fact,
10 sir, that it was your associates as distinguished
11 from lawyers who selected the pages that you were to
12 read?
13 MR. WILLIAMSON: Objection.
14 A In connection with this report that I'm
15 here to speak about today?
16 Q Certainly that, yeah.
17 A Well, in connection with Dr. Tennenbaum's
18 rebuttal, I'm pretty certain that my colleagues
19 pointed me to the important pages that I should read.
20 Q And do you know where they got the
21 information as to what pages they should read?
22 Did they read the entire depositions?
23 A They did, yes.
24 Q Okay. Now, as to some other aspect of
25 your assignment other than Dr. Tennenbaum's rebuttal,

79

1 Pfeiffer
2 do you know for a fact that the pages you chose to
3 read were chosen for you by your associates as
4 distinguished from lawyers?
5 MR. WILLIAMSON: Objection.
6 A I just do not recall.
7 Q All right. Do you base your opinions in
8 this matter upon the totality of the documents you
9 reviewed and the depositions you reviewed and the
10 studies you conducted or did you exclude certain
11 things from a basis for your opinions?
12 MR. WILLIAMSON: Objection.
13 A The basis of my opinion is limited to my
14 reading of Dr. Tennenbaum's report and the
15 consideration of the documents that are listed in
16 Exhibit A that I needed to -- that I needed to look
17 at or review or consider in connection with the
18 rebuttal report of Dr. Tennenbaum.
19 Q Are there certain documents that you
20 received in connection with any aspect of any
21 assignment you've ever had in this matter that you
22 excluded from consideration with respect to your
23 effort to rebut the Tennenbaum report?
24 MR. WILLIAMSON: Objection.
25 You can answer if you understand the

80

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 question.
3 A No.
4 Q Okay. So would it be fair for me to
5 conclude that your opinions are based upon the
6 totality of what you've seen, not specifically
7 excluding any particular document or category of
8 documents?
9 MR. WILLIAMSON: Objection.
10 A No, it's not fair to conclude that either.
11 Q So what is fair to conclude in this
12 regard?
13 A That, as I said, I did not explicitly
14 exclude anything, but I only considered the documents
15 I needed to consider for purposes of rebutting
16 Dr. Tennenbaum's report.
17 Q Did you write 100 percent of -- strike
18 that.
19 We've marked your report, sir, as Exhibit
20 625.
21 Is that in front of you?
22 A Yes.
23 Q Is it your report?
24 A It looks like it is. Yes.
25 Q Okay. You're looking at 624 at the

81

1 Pfeiffer
2 moment, or you're paging through it. But I want to
3 move to 625 now. All right.
4 Just to shorten things up, I'll let you
5 know that your counsel, Mr. Williamson, sitting next
6 to you, furnished this particular copy of it to us
7 this morning so I didn't monkey with it.
8 Is this your report?
9 A I trust you didn't monkey with it anyway,
10 but it looks like it's my report. Yes.
11 Q Okay. Did you write 100 percent of this
12 report, sir?
13 MR. WILLIAMSON: Objection.
14 A I certainly provided the 100 percent of
15 the opinions in this report but -- but I had some
16 assistance in writing some portions of the text.
17 Q Now you had some assistance from some
18 members of your team within your company; isn't that
19 right?
20 A That's correct.
21 Q As you sit here today, sir, can you be
22 certain that no portions of your report, Exhibit 625,
23 were written or drafted by attorneys?
24 A Yes.
25 Q Okay. Is that also true of all earlier

82

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 drafts of this report?
3 A Yes.
4 MR. WILLIAMSON: Objection.
5 Q Okay. And do you stand behind everything
6 contained in Exhibit 625, your report, as you sit
7 here today?
8 A Yes. With --
9 MR. WILLIAMSON: Actually, you know
10 what --
11 A I am sorry --
12 MR. WILLIAMSON: -- let's go off the
13 record for just a second.
14 MR. CASTANARES: Okay.
15 THE VIDEOGRAPHER: The time is 11:30 a.m.,
16 this marks the end of tape 1, we're off the record.
17 (Off the record.)
18 THE VIDEOGRAPHER: The time is 11:38 a.m.,
19 this marks the beginning of tape 2 in the deposition
20 of Allen Pfeiffer. You're on the record.
21 MR. CASTANARES: Thank you.
22 BY MR. CASTANARES:
23 Q Mr. Pfeiffer, before the break I asked you
24 if you still stood by everything in Exhibit 625
25 today. And your counsel has pointed out there's

83

1 Pfeiffer
2 apparently a discrepancy in stock prices as shown on
3 page 5. And the figures that show there is \$4.23 and
4 \$1.65 respectively, are apparently both 10 cents high
5 because these are London prices rather than New York
6 prices, or words to that effect. Is that correct?
7 A It's approximately correct. I mean I
8 think it's -- it's true that the \$1.65 on the U.S.
9 exchange is \$1.55. The 4.23 on the -- in the U.S.
10 exchange, sitting here today I'm not exactly sure if
11 it was 4.11 or 4.13, but it's approximately a dime
12 lower.
13 Q Okay. Thank you. With the exception of
14 that single correction, sir, do you now stand behind
15 everything that's contained in Exhibit 625?
16 A Yes.
17 Q All right. Now, looking at pages 3 to 4
18 in paragraph 1, you are critical of Dr. Tennenbaum's
19 damages calculations, saying that he should have
20 compared Oakwood's value on the resolution of its
21 actual bankruptcy case with its value on a resolution
22 of a hypothetical Chapter 11 case filed in September
23 of '01.
24 Have I summarized that criticism
25 correctly?

84

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 (Witness reviewing document.)
3 A You're -- you're summarizing half of the
4 sentence correctly but --
5 Q Okay. What's the other half?
6 A -- it says "in my opinion, given that
7 Dr. Tennenbaum believes what he believes," right,
8 therefore it was his obligation to do a comparison
9 between the actual value upon the resolution of the
10 bankruptcy and the hypothetical bankruptcy as of
11 September 2001.
12 Q All right. So are you saying -- you're
13 not saying then that appropriate valuation technique
14 in and of itself would compare, in this particular
15 instance, would compare Oakwood's value resulting
16 from the actual bankruptcy to a hypothetical
17 bankruptcy in 2001, but only if one accepts
18 Dr. Tennenbaum's belief that the company should have
19 filed bankruptcy would that methodology be proper; is
20 that correct?
21 MR. WILLIAMSON: Objection.
22 A Only if you believe that there was damage
23 as a result of the fact that the company should have
24 filed for bankruptcy or should have taken a
25 drastically different course of action as of

85

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

September 2001, as Dr. Tennenbaum contends, then you would, then in that circumstance it is my contention that the proper way to do the comparison between one date and the other is as reflected in this paragraph, which is to compare the resolution value to the hypothetical value.

Q Okay. Now have you ever seen that done before, somebody comparing the outcome of an actual Chapter 11 bankruptcy to a hypothetical Chapter 11 bankruptcy that would have occurred at an earlier date?

MR. WILLIAMSON: Objection.

A Yes.

Q Have you done it yourself?

A In broad terms, yes.

Q All right. Did you do it in this case?

A No.

Q Why not?

A I wasn't asked to.

Q So as you sit here today you have no way of knowing whether comparing the result of a hypothetical bankruptcy in 2001 to the actual bankruptcy in 2003 would yield a different result from the one Dr. Tennenbaum got by comparing two

1

Pfeiffer

belief?

A As -- as written in my report, the ultimate sales price was approximately \$375 million. And for various reasons it's my belief that if the company would have filed in September of 2001 it would not have obtained a value of 50 or so million dollars more than that, which is what Dr. Tennenbaum's analysis leads one to believe.

Q Well, in fact, sir, Dr. Tennenbaum says that the company would have gotten \$350 million if it had filed in September 2001; isn't that true?

MR. WILLIAMSON: Objection.

A Dr. Tennenbaum concludes on the fair market value as of September 2001 are \$350 million.

I don't know if that's what he thinks the company would have gotten if they filed the bankruptcy, but that's what he concludes.

Q But he doesn't say that the company would have gotten more dollars in 2001 in a bankruptcy than what was ultimately the amount of the sale to Buffett, does he?

A He does not say that, no.

Q Okay. Well, what do you think the company would have gotten for its assets in this hypothetical

86

88

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

discounted cash flow analyses in 2001 and 2002, do you?

MR. WILLIAMSON: Objection.

A I have basis to believe that the answer would be different.

Q Is your basis anything other than guesswork?

A Yes.

Q And you say the answer would be different. I don't doubt that it may be different.

Do you know whether it would be bigger or smaller?

MR. WILLIAMSON: Objection.

A I do, yes.

Q What do you know?

A That the difference would be smaller.

Q So there would be a smaller difference between the amount achieved in the actual bankruptcy and the amount achieved in a hypothetical 2001 bankruptcy compared with the difference between the amount in Dr. Tennenbaum's two cash flows; is that your testimony?

A Yes.

Q All right. And what's the basis of that

1

Pfeiffer

bankruptcy in 2001?

MR. WILLIAMSON: Objection.

A I have not conducted that study.

Q Well, if we're going to compare, sir, on the one hand the difference between the actual bankruptcy results and the hypothetical 2001 bankruptcy results to Dr. Tennenbaum's two discounted cash flows studies on the other, what is the basis of your saying that the difference would be greater or lesser than Dr. Tennenbaum's result if you don't know what you think the hypothetical bankruptcy would have achieved?

MR. WILLIAMSON: Objection.

A My basis is looking at the market values of the company as of 2001 and how they changed from that point to the ultimate resolution of the bankruptcy. That's among my bases.

I didn't analyze the problem in its totality, but that's my inclination.

Q Well, when you say market values, you're talking about performing what you called a market value study before, where you take the total stock and total debt values?

A Market data. I think we called it market

87

89

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 data, yes.

3 Q Is that what you're talking about when you

4 are talking about finding market values now?

5 A Yes.

6 Q So you would start with a roughly \$230

7 million or so, I think you said your number was

8 fairly close to Shapiro's for 2001, that would be

9 your starting point?

10 MR. WILLIAMSON: Objection.

11 A I'd have to do more analysis to look at

12 whether there would be other liabilities, a

13 contingent liability's included in that number, but I

14 would start with the market data.

15 Q Okay. And then you'd compare -- if you

16 found that the market data showed a \$230 million

17 value you could compare that 230 to the 373 that

18 Buffett paid in 2003?

19 MR. WILLIAMSON: Objection.

20 A Again, I'd have to do more analysis to

21 make sure that those two numbers are apples to

22 apples.

23 Q What would you have to do?

24 A Look at whether there are differences in

25 the liabilities assumed as of those two dates to

90

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 determine whether the 230 is complete or should I add

3 some portion of those liabilities and other debt

4 obligation.

5 Q It is your testimony, though, sir, that

6 the comparison of a market data analysis in 2001 is

7 an apples to apples comparison with the bankruptcy

8 sale to Buffett in 2003?

9 MR. WILLIAMSON: Objection.

10 A I'm not understanding your question.

11 Q Does appropriate valuation methodology

12 allow one to arrive at a differential in value

13 between two dates, one of which consists of a market

14 data analysis on date one and the second of which

15 consists of a bankruptcy sale on date two? Is there

16 authority in the literature of your profession for

17 such a comparison?

18 MR. WILLIAMSON: Objection.

19 A It's not that simple. You'd have to

20 understand all the circumstances and be able to

21 reconcile those numbers one to the other.

22 There are differences in the circumstances

23 between those two dates and those two scenarios, and

24 so you'd have to understand all the issues

25 surrounding those numbers.

91

1 Pfeiffer

2 Q Okay. So I take it, though, you didn't do

3 the hypothetical bankruptcy comparison that you say

4 Tennenbaum should have done, did you?

5 A I did not.

6 Q Tell me the steps you would go through in

7 order to determine how much a hypothetical bankruptcy

8 would have achieved in 2001 so as to be able to

9 compare it to the actual bankruptcy that occurred a

10 year later.

11 A I would begin by obtaining a complete

12 understanding of what people thought at the time in

13 terms of what their options were, if they were to

14 file or if they were to go in a different direction

15 as of that date. What potential buyers and market

16 participants thought the company was worth. What the

17 company was worth to liquidate. What kind of values

18 would they get for each group of assets.

19 I would look at the various scenarios of

20 limiting the company's exposure to certain

21 businesses, because the company was vertically

22 integrated.

23 So if they limited their exposure to

24 certain levels of that integration process, what that

25 would mean from a cash flow perspective.

92

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 I'd model out all the various scenarios.

3 I would look at what contemporaneous observers felt

4 with regard to the value of the debt and the

5 potential value to the equity.

6 Of course I would consider market data as

7 it relates to the value of the debt and the value of

8 the equity.

9 I would do a market comparables approach

10 also, obviously considering the fact that the company

11 may or may not be a going concern as of that date,

12 assuming a hypothetical bankruptcy. And in doing

13 that I might do a market approach, which was not

14 based on EBITDA or some measure of earnings but

15 rather a, you know, an asset-by-asset market

16 approach, what could you sell the inventory for,

17 looking at measures of how other companies may have

18 sold their inventory and so on and so forth.

19 So there are a number of things I would do

20 and a number of different approaches I would take

21 before arriving at a conclusion, which is

22 hypothetical in nature.

23 But again, I certainly would start with a

24 complete understanding of what everybody thought at

25 the time and what they thought their options were and

93

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 what they considered, didn't consider at that point
3 in time.
4 Q And those are not steps you have actually
5 undertaken in this case; isn't that true?
6 A I have not.
7 Q But you would need to go through those to
8 find out what this comparison would yield?
9 A Yes.
10 Q Now, what would you be comparing, by the
11 way? Would you be comparing the figure that could be
12 achieved for a sale of the assets in a hypothetical
13 2001 bankruptcy compared to the 373 million that
14 Buffett paid or would you be comparing the amount of
15 dividend to creditors in the hypothetical bankruptcy
16 compared to the actual 2002 bankruptcy, or some
17 combination of those or something different? What
18 would you be comparing?
19 A Your question presupposes some question
20 that went before this, you know, for a few minutes
21 ago. I would only be -- you asked me what I would
22 do.
23 I'm only telling you what Dr. Tennenbaum
24 should have done given his statement that the
25 company -- that he believes the company was damaged

94

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 because of the continued operations at September
3 2001.
4 Q All right. Let me clarify my question.
5 A So asking what I am doing is not really --
6 Q I'll clarify my question.
7 A Okay.
8 Q If Dr. Tennenbaum had done what you say he
9 should have done, would the comparison have involved
10 simply comparing the raw sale price of the assets or
11 would it have involved comparing the dividend payable
12 to creditors or both of those things or neither of
13 them or other things altogether?
14 What was the comparison between?
15 MR. WILLIAMSON: Objection.
16 A Given Dr. Tennenbaum's contention that the
17 company should have changed its course of operation
18 in September 2001, and that indecision led to certain
19 damages, if he were to have tried to prove that
20 correctly he would have modeled not just the raw
21 sales price but the entire picture, the entire
22 equation as to what Oakwood would have been able to
23 achieve in terms of value for its combined
24 stakeholders as of that date. And that would
25 include, for example, if they were going to file for

95

1 Pfeiffer
2 bankruptcy, it would include the costs associated
3 with filing for bankruptcy and the issues related to
4 its reputation, would include potential, you know, a
5 look at how marketable the assets were and so on and
6 so forth.
7 Q Should he have compared the hypothetical
8 dividend to creditors achievable in the hypothetical
9 earlier bankruptcy to the actual dividend to
10 creditors in the real bankruptcy?
11 MR. WILLIAMSON: Objection.
12 A You know, I'm not sure if that's a legal
13 issue, a legal question.
14 Q It is not intended to be a legal issue.
15 I am asking you what the appropriate
16 methodology among people in your profession would
17 have called for him to do that you say he didn't do.
18 A I'm saying he should have looked at the
19 value to Oakwood, if they would have made this
20 decision to change their business versus what they
21 ultimately ended up obtaining in terms of value for
22 Oakwood at the end of the day. So that would -- if
23 you're talking about, if that is described as payment
24 to creditors or payment to stakeholders or total
25 value of the Oakwood estate, Oakwood business at that

96

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 time given a different decision, that's what I would
3 focus on.
4 Q Okay. So are you saying he should have
5 studied, if he had done what you believe the
6 appropriate methodology in your profession would have
7 required Dr. Tennenbaum to do, he should have studied
8 both the raw sale price that would have been achieved
9 in the earlier hypothetical bankruptcy and the
10 difference between the dividend to creditors that
11 would have been achieved in the hypothetical
12 bankruptcy and what was actually paid to creditors?
13 MR. WILLIAMSON: Objection.
14 A I didn't say that.
15 I said that -- no. I said that he
16 would -- you're referring to a raw sales price. I'm
17 not really sure what that means. I'm not really sure
18 what you mean by dividend to creditors and
19 hypothetical -- again, I said the value of Oakwood,
20 given a different set of decisions, what value would
21 there be to the stakeholders at large after
22 consideration of whatever action they would take,
23 whether it's conduct the business in a different way
24 or going into bankruptcy and then emerging from
25 bankruptcy or liquidating the business or doing some

97

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 combination thereof, and inclusive of bankruptcy
3 costs and whatever other reputational issues it may
4 be.
5 So it's inclusive of the entire picture,
6 in a hypothetical state versus the actual state.
7 Q All right. Let's take it perhaps one step
8 at a time.
9 The actual bankruptcy sold the assets of
10 Oakwood to Mr. Buffett in late 2003 for \$373 million.
11 That's what your report says, doesn't it?
12 A That's correct. 373, 375 or --
13 Q 373, 375, something like that, okay?
14 What figure should Dr. Tennenbaum have
15 derived if he had followed the appropriate
16 methodology, according to you, to compare to the 373
17 or \$375 million sale to Buffett?
18 MR. WILLIAMSON: Objection.
19 A Well, in response to your question, let me
20 take a very large and important step back just to
21 make sure to clarify a very important issue.
22 Dr. Tennenbaum purports to be analyzing
23 damage. And until now we've discussed a topic as if
24 the change in value between the actual sale and the
25 hypothetical sale is potential damage. And that's

98

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 not true.
3 Damages -- when you look at damages in
4 this context, one must consider many other factors
5 besides a change in value between two points in time.
6 And those factors include the fact that
7 the market changes irrespective of whether you make a
8 decision or not, you know, the view of the market
9 changes between two times -- two moments in time.
10 The broader market changes, the specific industry in
11 which Oakwood found itself changes.
12 There's also as it relates to damage
13 there's an issue of causation. Did their decision
14 cause the damage or did some other factors cause the
15 damage?
16 Credit Suisse's role or lack of role in
17 that damage is also obviously an issue. There's the
18 specificity of a damages calculation that has to be
19 considered.
20 So when you ask me about Dr. Tennenbaum's
21 analysis and what he should have done, it goes well
22 beyond the fact that he should have looked at the
23 value of the two companies as of two different dates.
24 In order to arrive at a damages calculation, he had
25 to do a lot more than that.

99

1 Pfeiffer
2 Q Is it your practice as a valuation
3 professional to render opinions on issues of
4 causation in damages, sir?
5 MR. WILLIAMSON: Objection.
6 A I've looked at issues related to damages
7 in the past on behalf of my clients.
8 Q Have you rendered as an expert -- have you
9 ever qualified as an expert on causation of damages?
10 MR. WILLIAMSON: Objection. You mean
11 causation in terms of what you and I mean by
12 causation or something else?
13 MR. CASTANARES: I think I am using the
14 causation in the -- I think he's -- I think his
15 answer answers the question, sir.
16 Q You may answer.
17 MR. WILLIAMSON: If you understand.
18 Q Have you ever qualified as an expert on
19 the field of causation of damages?
20 A No, I don't believe so.
21 Q Did you ever go to law school?
22 A I've attended classes in law school when I
23 was in business school at Columbia, I did attend some
24 classes, but I did not -- I did not graduate with a
25 law degree.

100

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 Q Have you ever written on the field of
3 causation and damages?
4 A Certainly have not, no.
5 Q Have you taught that field?
6 A No, I have not.
7 Q So you've told me there are a number of
8 legal issues that are involved in damages that are
9 for the Judge and the jury to look at in this case.
10 I am strictly speaking, asking you to tell
11 me your criticisms of Dr. Tennenbaum's report as
12 fellow valuation experts.
13 It's correct, is it not, sir, that
14 Dr. Tennenbaum's damages calculation is based upon
15 comparing the value of the assets of the company on
16 September 30, 2001 to the value of the assets on
17 September 30, 2002; that is correct, isn't it?
18 MR. WILLIAMSON: Objection.
19 A You had a whole long speech before the
20 question.
21 Q All right.
22 A I don't agree -- if you're asking me if it
23 is -- your speech before the question I don't agree
24 with.
25 I don't think I gave any legal opinions.

101

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 I was simply telling you that what he did
3 was not a damages calculation because there's a lot
4 of issues in damages, separate from causation,
5 there's a lot of issues in damages that are not in
6 his report.
7 Q Okay.
8 A But now you're -- so you got to have to
9 rephrase your question and --
10 Q I will restate the question.
11 A -- and forget about that whole
12 introductory remark maybe.
13 Q You understand Dr. Tennenbaum's opinion to
14 be based upon a comparison on the value of the assets
15 of the company at September 30th, '01 to the value of
16 the assets of the company at September 30th, '02,
17 correct?
18 A That's part of his opinion, yes.
19 Q And those two evaluations were based upon
20 discounted cash flow analyses in both cases, correct?
21 A Correct.
22 Q And you say that that's not what he should
23 have done; he should have been comparing the value of
24 what would have been achieved in a hypothetical 2001
25 bankruptcy to the value of what was achieved in a

102

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 2002 bankruptcy; is that correct?
3 A No.
4 Q What is correct?
5 A I'm saying that as a first critique -- I'm
6 saying a lot of things, by the way.
7 If you read my report you will see a lot
8 of other things besides this.
9 Q We will get to all of them, don't worry.
10 Stick to this one.
11 A But as it relates to this exact point, I
12 didn't say anything about how he should have looked
13 at September '02's bankruptcy.
14 I said that he should have compared the
15 actual resolution, the actual bankruptcy proceeds,
16 with what he alleges to be what should have been a
17 company in September 2001 that should have acted a
18 very different way than it acted.
19 So he should have modeled what it would
20 have been worth if they should have done it the way
21 he said they should have done it, which is I
22 understand to be filing for bankruptcy, should have
23 compared that to what actually happened, to arrive at
24 the beginnings of a damages analysis. But what I
25 said before is that would not be a damages analysis,

103

1 Pfeiffer
2 no.
3 Q If you were doing the kind of analysis
4 that you suggest that Dr. Tennenbaum should have
5 done, would you somehow take into account the present
6 value in 2001 of the 373 that was achieved in early
7 2004, early 2003?
8 MR. WILLIAMSON: Objection.
9 A I would consider that issue, yes.
10 Q Yes. And you'd do that by utilizing a
11 discount rate, correct?
12 A There could be various ways to do that.
13 It depends what I was trying to accomplish. I mean
14 it would depend on whether the analysis was meant to
15 provide. I mean I think, as I've mentioned before,
16 you'd have to adjust for a lot of other issues that
17 relate to market movements. And I wouldn't want to
18 double-count adjusting for market movements and
19 adjusting for discount rates. And so I'm not sure if
20 I would just apply a discount rate.
21 I'd have to look at whether other
22 adjustments have been made to arrive at a conclusion
23 that makes sense before just applying a discount
24 rate.
25 Q What is the nature of the figure in the

104

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 hypothetical 2001 bankruptcy that you would compare
3 the 373 million in the actual bankruptcy to?
4 MR. WILLIAMSON: Objection.
5 A I don't understand the question.
6 Q Well, you say that Dr. Tennenbaum should
7 have compared the actual bankruptcy to a hypothetical
8 2001 bankruptcy, correct?
9 A Given his contention, that's what I would
10 have expected him to do, yes. As I wrote in my
11 report that would be a more plausible analysis.
12 Q In making that point, sir, you make
13 reference on more than one occasion to the fact that
14 the result of the 2001 -- the actual bankruptcy,
15 rather, was a sale to Buffett for 373 or 375, right?
16 A Right.
17 Q Okay. In making the comparison that you
18 say that Dr. Tennenbaum should have done, based upon
19 his assumptions, what figure compares to the \$373
20 million?
21 MR. WILLIAMSON: Objection.
22 A The figure doesn't exist. I'm not sure
23 what you're asking.
24 Q Well, what should he have -- what steps
25 should he have gone through then, sir, to construct

105

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 this hypothetical 1970 -- rather -- 2001 bankruptcy?
3 MR. WILLIAMSON: Objection, asked and
4 answered.
5 A I thought I answered -- I thought I
6 answered that already.
7 MR. WILLIAMSON: A while ago.
8 Q I'm not sure you have.
9 What should he have been looking for to
10 compare to the \$373 million? That's what I am asking
11 you.
12 MR. WILLIAMSON: Objection.
13 A I'm just going to tell you the same answer
14 I told you before, if that's what you want to hear.
15 Q Yes, let's hear it.
16 A But he should have done a full analysis of
17 all the scenarios and everybody's view and all the
18 analysis and all the approaches and all the
19 methodologies that are appropriate to assess a
20 company that was considering the possibility of
21 bankruptcy and other similar scenarios as of that
22 date.
23 Q Would that process have yielded a figure
24 that you think he should have compared to the
25 \$373 million the assets were sold for in the real

106

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 bankruptcy or wouldn't it have?
3 A As I said a few minutes ago, it would be
4 unfair to compare those two numbers without
5 considering the many changes that have occurred over
6 a period of a few years. I'd include market
7 movements, present value issues as you mentioned
8 before, issues related to the industry, and the like.
9 Q Well, whether it was fair to compare the
10 numbers isn't the question I am asking.
11 I'm asking, should he have derived a
12 number to compare to the 373?
13 A He should have derived a number to compare
14 to the 373 or some number -- or the 373 adjusted for
15 the issues related to the industry and the time that
16 has elapsed and the marginal market movements and all
17 kinds of issues like that.
18 Q Okay. You say one or the other, right?
19 A Well, I just -- you know, it depends what
20 approach he's taking.
21 You got to adjust either the first number
22 or the second number to allow for the fact that
23 comparing those two numbers without adjusting them
24 doesn't, doesn't tell you anything about damages.
25 Q Okay. My question is, there has got to be

107

1 Pfeiffer
2 two numbers, though, right? There's got to be some
3 number that compares to the 373? Am I right or am I
4 wrong?
5 A As I said before, you may -- you may -- he
6 may have chosen instead to adjust the 373, not
7 compare it to exactly the 373, but rather adjust the
8 373 for issues that relate to market changes,
9 industry changes, the time that's elapsed in those
10 two years, and the like.
11 Q Okay. So let's suppose he did it that
12 way. He took the 373 and he adjusted it for all the
13 things he should have adjusted it for. Fair enough?
14 A Okay.
15 Q What does he compare that 373 as adjusted
16 to?
17 MR. WILLIAMSON: Objection.
18 A He'd either compare the adjusted 373 to a
19 hypothetical bankruptcy sale in 2001 or he would
20 compare the adjusted value of the hypothetical 2001
21 to the 373.
22 Q How would he appropriately derive the
23 figure for the hypothetical bankruptcy sale in 2001?
24 MR. WILLIAMSON: Objection.
25 A I think I've answered that several times.

108

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 Q Would he use a discounted cash flow
3 analysis?
4 A As I said before --
5 MR. WILLIAMSON: Objection.
6 A -- he would use various methodologies and
7 various analyses, but you would not use a simple
8 discounted cash flow the way he's done it, no.
9 Q Would you use, if it were you, would you
10 do any discounted cash flow analysis?
11 A I might do a form of discounted cash flow
12 that allows for the various scenarios that one might
13 find in a bankruptcy in addition to the -- and I'd
14 compare it and do that in addition to the, you know,
15 liquidation analysis and looking at market
16 indications and so on and so forth, market data and
17 the like.
18 Q All right. And do you have any reason as
19 you sit here today to believe that if you attempted
20 to derive a figure for the hypothetical bankruptcy
21 sale in 2001 it would be a different figure from the
22 market data figure of around \$230 million that
23 Dr. Shapiro's supplemental report shows for that
24 date?
25 THE WITNESS: Could you repeat the

109

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 question, I am sorry.
3 (Question read.)
4 A I have not conducted the analysis.
5 Q In fact, sir, as you sit here today you
6 haven't any idea what a hypothetical bankruptcy sale
7 would have derived in 2001, do you?
8 MR. WILLIAMSON: Objection.
9 A I don't know how you define "any idea,"
10 but I don't have an answer.
11 Q Okay. That's good enough.
12 And you don't have any idea, sir, of what
13 a hypothetical bankruptcy would have paid in terms of
14 dividend to creditors to contrast with the 47 percent
15 dividend to creditors that you make reference to more
16 than once in your report as the result of the actual
17 bankruptcy; isn't that true?
18 MR. WILLIAMSON: Objection.
19 A I have not formed a conclusion relative to
20 that.
21 Q In fact, you have no idea whatsoever, have
22 you?
23 MR. WILLIAMSON: Objection.
24 A Again, I would not agree with that
25 characterization of what it means.

110

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 Q Well, if you have any idea whatsoever,
3 describe it for me, please.
4 A I have an idea as to how I'd arrive at
5 that number, as I told you. And I have an idea as to
6 what the market data's telling me. And I have an
7 idea as to what, you know, what are magnitude
8 relative to what Dr. Tennenbaum has stated. And so
9 all that has been discussed already. But I don't
10 have -- I don't have conclusions with regard to the
11 exact figures.
12 Q In attempting to derive a value for
13 Oakwood on any basis in 2001, how does the
14 professional valuation expert take into account the
15 sale to Buffett in 2003?
16 MR. WILLIAMSON: Objection.
17 A In arriving at the value as of 2001, that
18 was the assignment and the only assignment.
19 The manner in which or the appropriateness
20 of considering the sale to Buffett at all would
21 depend on the nature of the assignment as of 2001.
22 If I was asked only to value, I think as
23 your question asked, only to value the assets as of
24 2001, that's the only thing I was told, and I wasn't
25 told about a damages analysis or anything to do with

111

1 Pfeiffer
2 the bankruptcy or anything to do with anything else,
3 then I would not consider anything that happened
4 beyond 2001 at all.
5 Q All right. And if I ask you to do a
6 valuation of the assets in 2002, would it also be
7 correct that you wouldn't consider anything that
8 happened afterwards at all either?
9 MR. WILLIAMSON: Objection.
10 A If I was told -- again, if the context of
11 my analysis was to only value as of 2002 and not
12 consider the relative changes in value and not
13 consider damages and not consider decisions and not
14 consider anything, you know, only consider as of that
15 date and not look beyond, then I think the question
16 defines the answer.
17 If I'm asked not to consider events that
18 were subsequent to that date, I wouldn't consider
19 events subsequent to that date.
20 Q If I asked you to consider the value of
21 the assets of Oakwood in September of 2001 compared
22 to the value of the assets of Oakwood in 2002,
23 September 30 both years, to what extent would you
24 consider the subsequent sale to Buffett in 2003/2004?
25 MR. WILLIAMSON: Objection.

112

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 A I think it would depend on the context of
3 the question.
4 Q Well, if I just asked you for a
5 mathematical calculation, Mr. Pfeiffer, I would like
6 you to give me the fair market value of the assets of
7 Oakwood in 2001 by whatever methods you deem
8 appropriate, I would like you to do the same study in
9 2002 by whatever methods you deem appropriate, and if
10 you find a difference I'd like you to add or subtract
11 and tell me the answer.
12 To what extent on that basis would you
13 take into account the sale to Buffett in 2003?
14 A If the assignment was meant to only
15 consider those two dates and nothing that happened
16 after those two dates, I would be inclined to not
17 include hindsight and not include anything that
18 happened after those dates.
19 However, to the extent that there was any
20 misinformation, you know, lack of disclosure, fraud
21 or that kind of issue and there were things that
22 allowed for more information subsequent to that date
23 that caused me to question the appropriateness of the
24 value based on the information as of the previous
25 date, depending on the assignment I might consider

113

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 that as well.
3 Q Are you aware of any misinformation, lack
4 of disclosure or fraud as it relates to Oakwood at
5 any point, sir?
6 MR. WILLIAMSON: Objection.
7 A I think there was some -- there were some
8 times where investors and management understood
9 issues better than they understood them in the past.
10 And that understanding allowed them to have a better
11 basis for valuing the business, for understanding the
12 business.
13 MR. CASTANARES: Would the reporter please
14 read back the pending question to the witness.
15 (Question read.)
16 MR. WILLIAMSON: And the same objections.
17 A I'm not aware specifically of any lack of
18 disclosure or fraud, but I don't believe that -- I
19 could be mistaken -- but I don't believe the company
20 had full disclosure or audited financial statements
21 at all dates in 2002, and September of 2002 in
22 particular may not have had a completed, I don't
23 believe it had a completed set of financials and full
24 disclosures that one might expect and require.
25 And so therefore, although I'm not aware

114

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 of this information and the like, you know, I think
3 that it was a lack of the kind of information that
4 you'd typically expect.
5 Q Okay. Turning now to that section of your
6 report that's on pages 4 and 5, it talks about
7 market-based information. Is that the kind of market
8 data that we have been talking about in the market
9 data approach, as we've described it so far today,
10 namely you add up the total value of the stock out
11 there and the bonds out there?
12 A It's more than that.
13 Q Okay. What is it?
14 A Well, if you look at the -- I am sorry.
15 Were you asking about just paragraph 1?
16 Q I am talking about the paragraph -- there
17 are a number of paragraphs 1 in this document. So I
18 am trying to use page numbers to clarify.
19 I am talking about the one that starts on
20 page 4 with the words "is well-established" and then
21 continuing on to paragraph -- page 5, rather. You
22 talk about market data.
23 I am asking you if that's the same market
24 data, namely the value of stock and the value of
25 bonds, that we have talked about in the approach that

115

1 Pfeiffer
2 you called market data in earlier testimony today.
3 A Yes.
4 Q Okay. Now, I notice you say "when
5 available" here.
6 Are there situations in which such data is
7 not available?
8 A Yes.
9 Q What does the valuation expert do when
10 such data is not available?
11 MR. WILLIAMSON: Objection.
12 A Look at other contemporaneous market
13 information. You look at, obviously, all the other
14 methods that are appropriate for opining on a
15 valuation.
16 Q All right. And did you find the market
17 data to be sufficiently available in this particular
18 case to allow you to utilize that approach in
19 studying Oakwood at all dates that you deemed
20 appropriate?
21 A Yes.
22 Q All right. And I take it from this
23 paragraph, sir, that you are contending that
24 Dr. Tennenbaum should have used a market data
25 approach in comparing the value of Oakwood's assets

116

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 on the two dates he compared them rather than taking
3 a discounted cash flow approach?
4 MR. WILLIAMSON: Objection.
5 A That's an oversimplification of -- it's
6 just one critique of many is that he should have
7 considered market data.
8 Q And are you certain that he didn't or is
9 it just -- I mean is it possible that he considered
10 it and rejected it, as distinguished from didn't
11 consider?
12 (Witness reviewing document.)
13 A My reading of his deposition and my
14 reading of his report leads me to believe that he
15 didn't -- either he didn't consider it, or if he
16 considered it he certainly didn't tell anybody he
17 considered it. So I can't tell you what he, you
18 know, what he did in his office --
19 Q All right.
20 A -- but at least what I know he didn't
21 consider it.
22 Q Dr. Shapiro considered it, though, didn't
23 he?
24 MR. WILLIAMSON: Objection.
25 A Dr. Shapiro considered market data for his

117

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
 2 report.
 3 Q For his supplemental report, right?
 4 A On a different topic, but yes.
 5 Q Okay. On the topic being insolvency?
 6 A The topic of Dr. Shapiro's supplemental
 7 report, I think that's a good, broadly solvency, yes.
 8 Q Now, did you personally do the analysis
 9 that you contend that Dr. Tennenbaum should have paid
 10 more attention to here, namely a comparison of the
 11 market data approach in September of 2001 to the
 12 market data approach in September 2002?
 13 A I don't think that I said anything about
 14 how he should have done it as of September 30, 2002.
 15 I don't think September 30, 2002 is a relevant date.
 16 So you're mischaracterizing what I said he
 17 should have done.
 18 What I'm saying is that he ignored all
 19 contemporaneous and market-based information in
 20 conducting his analysis.
 21 Q Okay. And what would that data have shown
 22 if he had analyzed it for the two relevant dates?
 23 MR. WILLIAMSON: Objection.
 24 A How do you define "relevant dates"?
 25 Q September 30, 2001, September 30, 2002.

118

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
 2 A I --
 3 MR. WILLIAMSON: Same objection to the
 4 question.
 5 A I don't define those two dates as
 6 relevant.
 7 Q I'll rephrase the question.
 8 A Okay.
 9 Q You criticized Dr. Tennenbaum for not
 10 paying sufficient attention to market data in his
 11 approach; is that correct?
 12 A Yes.
 13 Q Okay. And his approach is to compare the
 14 market of Oakwood's assets at September 30, 2001 to
 15 the value of Oakwood's assets at September 30, 2002,
 16 correct?
 17 A Among other things that he's done.
 18 Q Okay. Well, the portion of it that you
 19 criticize for not having paid sufficient attention to
 20 market data is a comparison of the value of Oakwood's
 21 assets at September 30, 2001 to the value of
 22 Oakwood's assets at September 30, 2002, correct?
 23 A No.
 24 Q Why not?
 25 A I've criticized him for not -- not

119

1 Pfeiffer
 2 considering market data in providing an opinion of
 3 damages as it relates to Oakwood.
 4 Q So did you do a comparison of what the
 5 market data would show at September 30, 2001 to what
 6 it would show on September 30, 2002?
 7 A No.
 8 Q Would it be difficult to do?
 9 A No.
 10 Q We could do it sitting right here,
 11 couldn't we?
 12 MR. WILLIAMSON: Objection.
 13 A I'm not sure about that.
 14 Q All the data's in this room, isn't it?
 15 MR. WILLIAMSON: Objection.
 16 A You might need certain financial
 17 statements that I'm not sure if it's in this room
 18 but --
 19 Q It is. Let's start with September 30,
 20 2001.
 21 Stock price roughly \$4.15?
 22 MR. WILLIAMSON: Objection.
 23 Q According to your report, right?
 24 A Yes.
 25 Q As corrected?

120

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
 2 A Yes.
 3 Q About 9.3 million shares outstanding,
 4 correct?
 5 A
 6 MR. WILLIAMSON: Objection.
 7 A I'm not -- 9.-something, I don't
 8 remember --
 9 Q All right. Dr. Shapiro shows it in his
 10 report -- I can show you the CSFB documents if you
 11 want -- but if we take Dr. Shapiro's report, he's
 12 showing market value of equity using \$4.15 with
 13 9,531,000 shares outstanding?
 14 MR. WILLIAMSON: I am sorry, are you going
 15 to mark that or are we just going to --
 16 MR. CASTANARES: If you want --
 17 A 9- --
 18 MR. CASTANARES: I don't see any
 19 particular need to.
 20 Q He's showing \$39,554,000 of market value
 21 of equity as of September 30, 2001.
 22 Do you have any reason to differ with
 23 that?
 24 A I'd be more comfortable using my data, but
 25 I don't have a particular reason to differ.

121

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 I just know that number of shares was not
3 9.3 million, though.
4 Q I may have misspoken. He's got 9.531
5 million.
6 MR. WILLIAMSON: That's probably why we
7 should mark the document.
8 MR. CASTANARES: That's fine.
9 Unfortunately, it is my only copy of it.
10 MR. WILLIAMSON: I have a copy of it, I
11 think.
12 MR. CASTANARES: As a matter of fact, why
13 don't we -- hang on a second, let's pull out a...
14 (Pause.)
15 MR. CASTANARES: Sir, I am going to ask
16 that we mark as Exhibit 626 a document bearing CSFB
17 265172 through 265213 --
18 MR. WILLIAMSON: Is that in this set
19 (indicating)?
20 MR. CASTANARES: It is in the set that you
21 copied for me.
22 (Marked for identification.)
23 Q And I am going to draw your attention to
24 the page that is Bates stamped 185. And this, I know
25 that it has been marked before with a different

122

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 number, but I don't remember it so we'll mark it
3 again now if we can.
4 MR. WILLIAMSON: I am sorry, this starts
5 on 265172?
6 MR. CASTANARES: That's right.
7 MR. WILLIAMSON: Is that right? Okay.
8 MR. CASTANARES: That's right.
9 Q I am going to show you 265185.
10 This does not purport to speak as of 2001
11 but 2002.
12 MR. WILLIAMSON: If you prefer to take a
13 look at the document --
14 Q But is that a sufficient document for you
15 to get a rough idea, at least for working purposes
16 here today, as to the number of shares outstanding?
17 (Witness reviewing document.)
18 A It's sufficient for me to get comfortable
19 with the fact that CSFB has them as document and I
20 have no reason to -- that I have no reason to believe
21 that it's incorrect, that the shares outstanding as
22 of September 2002 were 9.53 million shares.
23 Q Okay. And that's what Dr. Shapiro shows
24 for 2001 as well. So are you comfortable enough or
25 do we need to get into further documents to look at

123

1 Pfeiffer
2 the 2001 date here? Is 9.5 more or less about right?
3 I am not going to care about a million
4 dollars here.
5 A What's a million dollars between friends?
6 Q What's a million dollars between friends,
7 right?
8 So is it fair -- sir, do you have any
9 reason to differ with an equity data -- rather -- a
10 market data valuation which, as of September '01,
11 values equity at roughly 39 or \$40 million?
12 MR. WILLIAMSON: Objection.
13 A No.
14 Q Okay. And you have -- I think you told me
15 you had bond price data for Oakwood's bonds at
16 September 30, 2001; is that right?
17 A That's right.
18 Q Okay. Do you have it in hand?
19 A The only thing I have in my hand is my
20 report.
21 Q Okay.
22 A And this document you gave me.
23 Q Okay. I will furnish you with a set of
24 copies of documents that was furnished to me
25 yesterday by Credit Suisse's counsel. I am going to

124

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 give you the whole package. It appears to contain
3 some bond data. I don't know if it's there. I also
4 got another exhibit that was produced by your office,
5 which is an e-mail with a lot of bond price data on
6 it.
7 Which of those would be more comfortable
8 for you to work with?
9 A The e-mail.
10 Q The e-mail. Okay. Let me get that out.
11 (Pause.)
12 Q I am going to mark, sir, as Exhibit 627 a
13 document which bears CSFB 519279 through 519291,
14 appearing to begin with an e-mail or a string of
15 e-mails perhaps -- actually an e-mail from you, it
16 looks like, followed by what appear to be bond price
17 data.
18 (Marked for identification.)
19 Q Is this the document that will help you
20 tell me what your data shows the bond price of
21 Oakwood's bonds to be at September 30th of 2001?
22 A Yes.
23 Q All right. And do you find \$51.50 and \$47
24 for the two issues to be about right?
25 A As of September 28, 2001, which is likely

125

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 the last trading date before September 30th, those
3 are the two prices, yes.
4 Q So would it be reasonable then to use as a
5 working number here \$50 for Oakwood's bonds as of
6 2001?
7 A It would be a reasonable approximation but
8 not an exact number.
9 Q Okay. I think you told me a moment ago
10 that we could do this here in this room.
11 MR. WILLIAMSON: Objection.
12 Q If we were doing it right here right now
13 in this room based upon your data, would you use \$50
14 as a reasonable approximation of Oakwood's bonds?
15 A What I actually said was -- well, to
16 answer, we could use \$50 as a reasonable
17 approximation, 50 cents on the dollar as a reasonable
18 approximation.
19 However, I did not say that we could
20 easily do it in this room, because as I said we might
21 need the financial statements to allow for various
22 adjustments to other forms of debt that are not --
23 they're not included in the public market price for
24 the bonds or for the stock.
25 Q All right. What forms of debt would that

126

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 be?
3 A Letters of credit, guarantees, contingent
4 liabilities, things like that.
5 Q Okay. But if we used this, we would show
6 roughly \$150 million as the market data indication of
7 the market's evaluation of Oakwood's public debt; is
8 that correct?
9 MR. WILLIAMSON: Objection.
10 A It's approximately correct.
11 Q All right. And subject to the possible
12 adjustments that you just described, you would then
13 take roughly \$40 million of equity and add it to
14 roughly 150 million of debt, make the adjustments you
15 described, and come to a figure of roughly \$190
16 million as an enterprise value subject to the
17 adjustments you described?
18 MR. WILLIAMSON: Objection.
19 A If you're asking me if 150 plus 40 is 190,
20 the answer is yes.
21 Q And that is the enterprise value subject
22 to whatever adjustments you might wish to make based
23 upon the financial statement data that you talked
24 about, correct?
25 MR. WILLIAMSON: Objection.

127

1 Pfeiffer
2 A Well, yeah. Yeah. It would be subject.
3 As a matter of fact, as you saw we mentioned earlier,
4 even Shapiro's number was not 190. So obviously the
5 subject is the --
6 Q Well, I think Dr. Shapiro used a different
7 bond price number from yours.
8 A Well, that could be --
9 Q If you look at Dr. Shapiro's report, which
10 I think --
11 MR. WILLIAMSON: We did not mark.
12 Q -- it was not marked but you have in front
13 of you.
14 A I do not have in front of me.
15 Q No? Where did it go?
16 Here it goes.
17 A I could take my jacket off if that's okay
18 with you?
19 Q Sure.
20 MR. WILLIAMSON: Tony, it's 12:40, so if
21 it is okay with you --
22 MR. CASTANARES: When we get to the end of
23 this line, let's -- we will quit.
24 (Pause.)
25

128

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 BY MR. CASTANARES:
3 Q Rather than to try to go through all the
4 adjustments right now, sir, so I just want to compare
5 the stock price plus the bond price on the two dates
6 and see if we agree on what result we get from that.
7 If we now take the 190 million that
8 results from the sum of those two numbers in
9 September 30, 2001 -- and if you'll be so kind to
10 look again at page 265185 of Exhibit 627 in front of
11 you --
12 MR. WILLIAMSON: That's the price list.
13 A What page number?
14 Q 265185. You're in the wrong document at
15 the moment. It's Exhibit --
16 MR. WILLIAMSON: 626.
17 A 626?
18 Q Excuse me. 626. 265185.
19 Here Credit Suisse in this document lists
20 the total bond value at 102.3 million; is that right?
21 MR. WILLIAMSON: I am sorry, where are
22 you? Tony?
23 MR. CASTANARES: Am I on 265185?
24 MR. WILLIAMSON: 265185?
25 A I don't see that number.

129

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 MR. WILLIAMSON: I don't see that on this
3 one.
4 Q Well, you don't see that number, but it is
5 the sum of the two figures that appear slightly
6 higher on the page; is that right, sir?
7 A I don't see.
8 Q I'll read the numbers. 49.8, do you see
9 that figure?
10 A Yes.
11 Q 52.5?
12 A Yes.
13 Q Okay. So we get 102.3 out of that; am I
14 right?
15 A Okay.
16 Q Okay. 102.3. And then Credit Suisse
17 lists the value of the stock at \$1.55 which conforms
18 to your number, right, at 14.8.
19 The sum of those two figures is \$117.1
20 million, correct?
21 A 102.3 plus 14.8 is 117.1, correct?
22 Q Right.
23 And so if we simply compare the value of
24 the market data respecting the stock and public
25 bond-traded price of Oakwood at September 30, 2001 to

130

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 the identical figures for September 30th of 2002, we
3 find that the combined value of those figures has
4 diminished by \$42 million over that period of time,
5 correct?
6 MR. WILLIAMSON: Objection.
7 A The total -- the sum of the three numbers
8 is less than the sum of the two numbers that we went
9 through before, meaning --
10 Q We went through before.
11 In 2001 the stock was 39 million 5 and the
12 bonds were 150 million, right?
13 A Approximately, right.
14 Q 190 million roughly, right?
15 MR. WILLIAMSON: Objection.
16 Q Right?
17 A Again, approximately.
18 Q Okay. And in 2002, the sum of those same
19 two calculations yields \$117 million, right?
20 A That's the math, correct.
21 Q And 159 minus 117 as a matter of pure
22 value shows a diminution -- as a matter of pure
23 mathematics -- shows a diminution of 42 million 5 and
24 some change, right?
25 A 159 minus 117 you said?

131

1 Pfeiffer
2 MR. WILLIAMSON: Objection.
3 Q Right.
4 A 159 minus 117 is 42.
5 Q Okay. Now, did you believe that the value
6 of Oakwood's securities was set by an efficient
7 market in 2001?
8 MR. WILLIAMSON: Objection.
9 A The value of these securities were set by
10 an efficient market in 2001, yes.
11 Q Did you believe the same thing in late
12 2002?
13 A Yes.
14 Q And what do you mean by the term
15 "efficient market"?
16 A It was freely trading with a reasonable
17 set of information associated with that trading.
18 Q Okay. And what is the effect of assuming
19 the existence of an efficient market on the
20 conclusions that a valuation professional can arrive
21 at from the available market data?
22 MR. WILLIAMSON: Objection.
23 THE WITNESS: I am sorry, could you repeat
24 the question.
25 (Question read.)

132

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 MR. WILLIAMSON: Same objection.
3 You can answer that if you --
4 A It's a -- it's a -- it's an important
5 premise that there's an efficient market or somewhat
6 efficient market before assigning any relevance to
7 the prices ascertained.
8 Q Is it fair to say that the efficiency of
9 the market, that gives the valuation expert comfort
10 in the reliability of market data as an indicator of
11 value?
12 A It provides comfort, yes.
13 Q Explain to me, sir, how you account for
14 the fact that between September 30, 2002, as shown on
15 Exhibit 626 in front of you, where Credit Suisse
16 shows Oakwood's stock to be worth \$1.55 and
17 approximately three weeks later, on September --
18 rather -- October 20th of the same year the stock had
19 fallen from \$1.55 to 57 cents.
20 MR. WILLIAMSON: Objection.
21 A You want me to explain why it dropped from
22 \$1.55 to 57 cents?
23 Q Yes.
24 MR. WILLIAMSON: If you know.
25 A The equity holders believe that the value

133

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 is 50-something cents instead of \$1.55 or they had

3 certain views relative to the -- relative to the kind

4 of payment they might get in a bankruptcy or things

5 change in terms of the capital structure of the

6 company. I mean there are a lot of reasons why a

7 stock can trade at different numbers.

8 Q New information came to the market?

9 A Well, the market also changes.

10 Q Okay.

11 A But there's -- it's -- I can't possibly

12 describe to you why a price would change between -- I

13 haven't analyzed that.

14 Q All right.

15 MR. CASTANARES: I want to mark one more

16 exhibit and question on it and then we can break. It

17 won't take long, but it is in the same line of

18 questioning.

19 628 is one of these documents that for

20 some reason has two different sets of Bates stamps.

21 I am going to use the one on the bottom. It is OHCLT

22 02616 through 02635.

23 (Marked for identification.)

24 Q And, sir, I am going to ask you to look at

25 the third page of this document, 02618.

134

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 (Witness reviewing document.)

3 Q This shows the market value of the Oakwood

4 bonds to have fallen from the 102.3 figure we saw on

5 Exhibit 626 to a total of \$60 million three weeks

6 later; isn't that true?

7 MR. WILLIAMSON: Objection.

8 A Yes.

9 Q And it shows the value of the stock, which

10 had shown at approximately 14 million and some change

11 on September 30, 2002 to have dropped to a total of

12 \$8.1 million, correct?

13 MR. WILLIAMSON: Objection.

14 (Witness reviewing document.)

15 A Correct.

16 Q So this indicates that the value of the

17 assets of this company as measured by the unadjusted

18 market data had dropped by an additional \$49 million

19 in that three weeks, correct?

20 MR. WILLIAMSON: Objection.

21 A I haven't done the math, but it dropped.

22 Q 117 minus 68 is about 49 million by my

23 math. Is that right?

24 A Okay.

25 MR. CASTANARES: All right. This is a

135

1

2 good place to take our lunch break. Can we make it

3 reasonably --

4 MR. WILLIAMSON: Quick?

5 MR. CASTANARES: -- quick? I do want to

6 try to get home tonight to --

7 MR. WILLIAMSON: Do you know, about what

8 time do you need to wrap up today?

9 MR. CASTANARES: I think I probably can

10 get this done in a couple of hours, maybe a bit less.

11 I think we've done -- the hardest part of this has

12 been the numbers we have been going through.

13 MR. WILLIAMSON: We can probably do lunch

14 over the next half hour or so.

15 THE VIDEOGRAPHER: The time is 12:48 p.m.,

16 this marks the end of tape 2, you're off the record.

17 (Whereupon, at 12:48 p.m., a luncheon

18 recess was taken.)

19

20

21

22

23

24

25

136

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 A F T E R N O O N S E S S I O N.

3 (Time noted: 1:30 p.m.)

4 THE VIDEOGRAPHER: The time is 1:30 p.m.,

5 this marks the beginning of tape 3 in the deposition

6 of Allen Pfeiffer. We're on the record.

7 MR. CASTANARES: Thank you.

8 A L L E N M. P F E I F F E R,

9 having been previously duly sworn, was

10 examined and testified further as follows:

11 EXAMINATION

12 BY MR. CASTANARES: (Continued.)

13 Q Mr. Pfeiffer, before lunch I asked you a

14 series of questions that contrasted the differential

15 between the added stock and bond market prices at

16 September 30, 2001 and the same figures for 2002.

17 And I think I may have misspoken in my questions in

18 that I had used Dr. Shapiro's bond valuation figures

19 of \$40 in the 2001 figures rather than the ones that

20 you show in Exhibit 627 of \$50.

21 And I just want to make sure that the

22 record is clear. If we use the \$50 valuation shown

23 in your Exhibit 627 for the bonds at September 30,

24 2001, the figure for the market value of the

25 company's bond debts would be 150 million, correct?

137

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 MR. WILLIAMSON: Objection.
3 A If I used \$50 or 50 cents you mean?
4 Q Fifty cents, whatever you want to call it.
5 Fifty.
6 A If I use 50 cents on roughly 300 million,
7 50 percent of 300 million is 150.
8 Q Okay. And I think we established that the
9 equity price as of that date was on the order of 39
10 to \$40 million, correct? 4.15 a share times
11 9.3 million shares, roughly?
12 A Approximately, yes.
13 Q Okay. And that yielded a total of
14 approximately \$190 million roughly, 189-something,
15 right?
16 A Yes.
17 Q And then in September of 2002, using the
18 CSFB figures at page 265185, we concluded that the
19 added market value of the Oakwood's stock and Oakwood
20 bonds as of September 30, 2002 was \$117.1 million; am
21 I right?
22 A We concluded that if you add the 52.5 and
23 the 49.8 you get -- you don't get 117, no, you get --
24 Q You get 102.3, right?
25 A 102.3, right.

138

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 Q And you add to that the stock value of
3 14.8?
4 A Okay.
5 Q And get to 117.1, correct?
6 A Correct.
7 Q All right. So the differential between
8 the added value of the market price of the stock and
9 the market price of the bonds at September 30, 2001,
10 and the same figures for September 30, 2002, is
11 actually 190 million minus 117.1 million, or roughly
12 73 million of diminution; is that correct?
13 MR. WILLIAMSON: Objection.
14 A I don't -- I don't agree with the
15 characterization that there's diminution. I just
16 think that there's -- if you do the math and you add
17 the numbers for the trading value of the notes and
18 the trading value of the equity, and compare the
19 trading value of the notes in the equity to those --
20 on those two dates, without doing any other analysis
21 with regard to other liabilities or other changes in
22 the marketplace or circumstances or the other facets
23 of the market capitalization that one might analyze,
24 if you do that exact -- just that math, the
25 difference is automatically to \$73 million.

139

1 Pfeiffer
2 Q Now let's talk about those various
3 adjustments.
4 By how much of a factor do you think those
5 might influence the conclusions that these two market
6 data studies show?
7 MR. WILLIAMSON: Objection.
8 A I haven't done the analysis, but it could
9 be significant.
10 Q Could it be more than, say, 10 or
11 15 percent?
12 A Ten or 15 percent of what?
13 Q Of the, let's take the \$190 million figure
14 we got for September 30, 2001.
15 A Right.
16 Q Do you think that there are various other
17 things that you might analyze in connection with
18 doing that market data study that would influence
19 that 190 million figure by more than 10 or
20 15 percent?
21 A Could be.
22 Q Could it be 50 percent?
23 A Could be.
24 Q And as you sit here today you don't have
25 any idea one way or the other?

140

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 A That's correct.
3 Q So as far as you know, sitting here today,
4 the \$190 million adjusted for the various adjustments
5 you think should be made could just as easily bring
6 the figure up to Dr. Tennenbaum's 350 million by his
7 DCF study, true?
8 MR. WILLIAMSON: Objection.
9 A But you're comparing things that are not
10 possible to -- I mean I'm not comparing 190 to 350.
11 I'm comparing what you would use as market data as of
12 a particular date relative to the complete story for
13 market data.
14 I wasn't comparing it or answering any
15 question relative to Dr. Tennenbaum's conclusion.
16 Q But if you take the \$190 million that we
17 have for the figure for the market value of the
18 equity and bonds as of that date and made all the
19 adjustments to it that you claimed that you think
20 should be considered to be made to it, as far as you
21 know that number that results from adjusting the \$190
22 million could be 50 million or 100 million or
23 200 million or 350 million or any other number; isn't
24 that true?
25 MR. WILLIAMSON: Objection.

141

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 A I think there's a realm of reasonableness

3 that it can't be any number, but I have not done the

4 analysis to ascertain what that number would be.

5 Q Okay. Now, is it your position, sir, that

6 the market data method is more indicative of the fair

7 market value of Oakwood's assets at September 30,

8 2001 than the discounted cash flow method?

9 MR. WILLIAMSON: Objection.

10 A It's my opinion that the market data

11 method is a better method than the discounted cash

12 flow as performed by Dr. Tennenbaum, yes.

13 Q Well, when you say as performed by

14 Dr. Tennenbaum, let me just talk about methodology in

15 general.

16 Knowing what you know about Oakwood, if

17 you were looking for the value of its assets at

18 September 30, 1992, do you believe that the market

19 data method would be more indicative of value than

20 the discounted cash flow method?

21 MR. WILLIAMSON: Objection. You said

22 "1992."

23 MR. CASTANARES: I am sorry, I meant to

24 say 2001.

25 A I -- I think that -- well, I haven't done

142

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 the discounted cash flow analysis in the appropriate

3 way.

4 If done the appropriate way, with all the

5 relevant adjustments and scenarios and considering

6 the state of the company and so on and so forth, then

7 I think both the discounted cash flow and the market

8 data would be relevant indicators of value.

9 Q And now if I asked you the same thing,

10 sir, if I hired you and asked you to give me an

11 analysis of the fair market value of Oakwood's assets

12 at September 30, 1992, would your answer be the same

13 that you think both of them would be appropriate

14 methods to utilize?

15 A I don't -- I don't know as of 1992 what --

16 Q I am sorry.

17 MR. WILLIAMSON: I thought --

18 Q I am just a decade off. 2002.

19 A Can you repeat the question again.

20 Q Yes, let me restate the question so it's

21 all in one place.

22 MR. WILLIAMSON: I thought you might have

23 meant to say it that time. Okay.

24 Q If I asked you to evaluate Oakwood's

25 assets, the fair market value of Oakwood's assets as

143

1 Pfeiffer

2 of September 30, 2002, would your answer also be that

3 you believe that both the discounted cash flow and

4 market data approaches are appropriate indicators?

5 MR. WILLIAMSON: Objection.

6 A I would have to do my own further analysis

7 to determine what methods are appropriate, given the

8 fact that the company was headed towards bankruptcy.

9 And I would also say that relative to your

10 question, that you mischaracterized my answer with

11 regard to what's appropriate as of 2001.

12 I mean I didn't say discounted cash flows

13 was an appropriate method as of 2001 as a blanket

14 statement. I said it has to be done with a lot of

15 careful attention to make sure that it actually

16 approximates the expected cash flows to the company

17 and the expected situation.

18 The discounted cash flow that's been done

19 here as a going concern, given the fact that

20 Dr. Tennenbaum believes it's, you know, it should

21 have changed the course of its business dramatically,

22 I think is entirely inappropriate.

23 Q You're critical of Dr. Tennenbaum for

24 using projections in his discounted cash flow study

25 for 2001 that he believed to be extremely aggressive;

144

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 isn't that correct?

3 A That's correct.

4 Q Were they or weren't they extremely

5 aggressive?

6 MR. WILLIAMSON: Objection.

7 A I have not reached a final determination

8 as to whether they were or weren't.

9 Q Have you ever expressed an opinion on that

10 subject?

11 A I might have preliminarily looked at that,

12 but I haven't reached an opinion on that subject, no.

13 Q But you did say in writing at least once

14 that they were not extremely aggressive, didn't you?

15 MR. WILLIAMSON: Objection.

16 A I don't recall exactly what I said, but I

17 might have said that there are ways to look at it as

18 more aggressive or less aggressive depending on an --

19 I don't recall what preliminarily I said.

20 Q You don't recall ever writing the words to

21 the effect that the 2001 projections used by

22 Dr. Tennenbaum were not extremely aggressive?

23 A I don't recall exactly what I wrote.

24 What I remember writing somewhere in an

25 e-mail that they might not have been as aggressive.

145

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

That's prior to -- that might have been prior to my full analysis and prior, certainly prior to Dr. Tennenbaum's deposition in which he thought they were extremely aggressive.

Q Well, so as you sit here today do you have an opinion on whether or not the 2001 projections were or were not extremely aggressive?

A I do not have an opinion on that.

Q So you don't really have an opinion, do you, then on the appropriateness of a discounted cash flow basis evaluation based upon those projections, rather you simply criticize Dr. Tennenbaum for using them despite the fact that he considered them to be extremely aggressive; isn't that correct?

A I think both statements are correct.

I criticize Dr. Tennenbaum for using what he perceives to be aggressive hockey stick projections, and using them in the manner which he used them, without the appropriate adjustments. And I also have a problem with him using these projections, irrespective of whether they're aggressive or not, on many other grounds.

As stated in my report, that those grounds include the fact that the basis of these projections,

146

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

how they came about, who authored them, at what period of time, with what set of knowledge is unknown. And it's unknown to Dr. Tennenbaum. And I don't, sitting here today, have a much clearer understanding of exactly how those projections came about either.

So what I'm saying is that I have a problem with him using those projections on that ground.

And I also have a problem with the fact that he -- whether they're aggressive or not aggressive, I have a problem with the fact that they're just put in a model as if this company was a regular going concern company without any allowance for the fact that the company was, first of all, operating under, to a certain extent, under distress and, second of all, certainly according to Dr. Tennenbaum, was headed towards, or should have been, according to Dr. Tennenbaum, should have been making very drastically different decisions.

And so I guess on many, many grounds I have problems with him using these projections, I have problems with his methodology, I have problems with his conclusion, I have problems with the way he

147

Pfeiffer

went about it, I have a problem with the things he hasn't done to corroborate and to work with his analysis and his conclusions. And, you know, as outlined in my report, those critiques have dramatic implications.

Q You saw those projections yourself, didn't you?

A I may have. I don't recall. I've seen them since.

Q You've seen them at some point or another, right?

A Actually, I'm having a hard time -- there's two different sets of projections that were used in 2001. And I believe I've seen one and I don't believe I've seen the other.

Q Okay. The place you saw the one set of projections that Dr. Tennenbaum used for 2001 was in a document created by your client, Credit Suisse; isn't that true?

MR. WILLIAMSON: Objection.

A I saw a document that was dated 2002, but it was a CSFB document.

Q Okay. So was that the 2002 projections or the 2001 projections?

148

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

A The 2001 projections used by Dr. Tennenbaum were in a document dated 2002.

Q Which is a CSFB document, right?

A Which is a CSFB document.

Q Okay. And do you have reason to believe that CSFB prepares unrealistic projections?

MR. WILLIAMSON: Objection.

A I have no -- I have no reason to believe that CSFB prepared the projections, and I have no reason to believe that CSFB or anybody prepared them at the time that this valuation date is meant to reflect.

And I also don't believe that CSFB in that document that I've seen purported these projections to be the expected case set of cash flows which one needs to use in using any discounted cash flow.

Q Did the CSFB document that you saw containing these projections contain some sort of disclaimer to the effect that CSFB didn't believe that they were accurate, shouldn't be relied upon?

MR. WILLIAMSON: Objection.

A I didn't -- I didn't analyze the document well enough to even approach it, you know, an answer to that kind of question.

149

1 Pfeiffer
2 Q So as I understand it, though, as we sit
3 here today, you don't have a position one way or the
4 other on whether the projections that Dr. Tennenbaum
5 used in 2001 valuation work were or were not
6 reasonable projections; is that true?
7 MR. WILLIAMSON: Objection.
8 A Again, I know what I read Dr. Tennenbaum
9 to have said at his deposition. Not only did he
10 refer to them as aggressive, but he referred to them
11 as hockey stick projections.
12 And so that's my basis, if I take a man at
13 his word who is doing a valuation, and he refers to
14 them as hockey stick projections, which is a
15 reference to the most aggressive, unrealistic
16 expectations -- projections you can find, and then
17 using those projections to arrive at a number, that's
18 the basis of my critique.
19 Basis of my critique is not my formulation
20 of my opinion with respect to his projection.
21 Q Your critique isn't whether Dr. Tennenbaum
22 came to the right conclusion or not, it's whether he
23 went about it the right way; isn't that correct?
24 Because you can't really express an opinion on
25 whether his DCF analysis came to the right conclusion

150

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 or not, can you?
3 MR. WILLIAMSON: Objection.
4 A I think I've answered you before about
5 that. I mean I have problems not only with his
6 methodology but also the things he hasn't done, his
7 inconsistencies, his formulation, his speculative
8 nature of his analysis. And I think you've read it
9 in my report.
10 I haven't -- I haven't reached my own
11 conclusion on the subject as to what those were.
12 Q Just so we're entirely clear here, I
13 believe you may have answered this earlier but I want
14 to be really clear here, you are not expressing an
15 opinion on whether or not the 2001 projections were
16 or were not reasonable projections, are you?
17 MR. WILLIAMSON: Objection.
18 A I am not expressing an opinion on that,
19 no.
20 Q And you are not expressing an opinion on
21 whether or not the 2001 projections were extremely
22 aggressive projections, are you?
23 MR. WILLIAMSON: Objection.
24 A I am not.
25 As you define 2001 projections, you're

151

1 Pfeiffer
2 defining the ones that he used as 2001 projections?
3 Q Yes.
4 A I am not here to express an opinion as to
5 whether they're extremely aggressive or not.
6 Q And do you yourself know the origin of
7 those projections?
8 MR. WILLIAMSON: Objection.
9 The 2001 projections?
10 MR. CASTANARES: Right.
11 (Witness reviewing document.)
12 A I don't know for sure, no.
13 Q When you do a discounted cash flow
14 analysis does that typically lead you to be able to
15 express an opinion of the fair market value of a
16 company?
17 MR. WILLIAMSON: Objection.
18 A It's typically one of the approaches that
19 I might consider using in arriving at a fair market
20 value.
21 Q And I think you said earlier that you
22 define fair market value to be the price that a buyer
23 would pay, a knowing and willing buyer, et cetera; is
24 that right?
25 MR. WILLIAMSON: Objection.

152

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 A That's how fair market value is defined,
3 yes.
4 Q Okay. And when you -- and you do arrive
5 at opinions in which you express an opinion as to the
6 fair market value of a company or the assets of that
7 company, don't you?
8 MR. WILLIAMSON: Objection.
9 A Generally speaking?
10 Q Yes.
11 A I do arrive at opinions of value, yes.
12 Q All right. Of fair market value, right?
13 A I do arrive at opinions of fair market
14 value, yes.
15 Q And when you do that, how do you go about
16 identifying who the buyer is going to be?
17 A I -- depending on the circumstances, I
18 either -- I either have a particular buyer in mind or
19 I have a set of potential hypothetical buyers in
20 mind.
21 Q And so is it necessary in order to achieve
22 an opinion of fair market value to know who the
23 buyer's going to be?
24 MR. WILLIAMSON: Objection.
25 A It's not necessary to determine exactly

153

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 who the buyer would be, no.
3 Q In fact, sir, the definition of fair
4 market value assumes a hypothetical buyer, doesn't
5 it?
6 MR. WILLIAMSON: Objection.
7 A I think it depends on the circumstances.
8 Definitions of willing buyer, willing seller I
9 don't -- I don't think it has to be a hypothetical
10 buyer. I mean I think you can determine fair market
11 value for a particular buyer as well.
12 Q In any of the work that you have done in
13 connection with Oakwood did you ever attempt to
14 locate any particular buyer that might buy its assets
15 or any part of them?
16 MR. WILLIAMSON: Objection.
17 A Broadly speaking, we did.
18 Q What did you do?
19 A We looked at the -- in connection with
20 this report, we discussed the marketability of these
21 assets and what might happen in a potential
22 bankruptcy and execution of a sale, and looked at
23 some depositions where the topic was discussed and,
24 you know, generally became aware of the fact that
25 there's a certain group of buyers either who are

154

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 strategic or are financial buyers that may or may not
3 have been interested at various points in time in a
4 company like this.
5 Q And can you identify any specific buyers
6 that you identified in the course of your work in
7 this matter, sir?
8 A That was not -- our role was not to
9 identify a specific buyer.
10 Q So you didn't do it, right?
11 A It was not -- I was not asked to, and it
12 had nothing to do with what I was trying to do in my
13 report.
14 Q Okay.
15 A I only noted that there were points in
16 time, I think, specifically Merrill Lynch I believe
17 notes at a point in time that they had a hard time
18 finding a potential buyer.
19 Q Let me ask you to refer now to page 5 of
20 your report, paragraph 3, beginning at the bottom of
21 the page there. And the second sentence of that
22 paragraph reads, "For example, post-September 2001
23 Oakwood's bonds showed a significant improving
24 trend."
25 What is the significance of that for your

155

1 Pfeiffer
2 opinion, sir?
3 A The significant -- the significance of
4 that sentence is that Dr. Tennenbaum believes that
5 the company should have shut its doors or discontinued
6 operations or file for bankruptcy in September of
7 2001.
8 And you would expect to see, if that were
9 the case, that things would, you know, absent other
10 market factors, you would have expected to see that
11 the market would have reacted the same way. That the
12 market would have said, you know, these guys really
13 should cut it out already, and we're not very
14 confident in this management and its ability to
15 continue as a going concern. And you might expect
16 the bonds to drop, in the same way that they actually
17 dropped, you know, with the numbers that you showed
18 me prior to lunch, in October of 2002.
19 And so because you did not see a decline
20 in the bonds, as a matter of fact you saw the
21 opposite, what you see is the market's contention,
22 the market's belief, that it was, if anything, more
23 comfortable with the company's situation than it was
24 prior to September 2001.
25 Q Did you see something in Dr. Tennenbaum's

156

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 report or in his deposition where he said the company
3 should have shut its doors or suspended operations in
4 2001?
5 A I saw him say that it should not have --
6 it should have not continued -- or, I should say, I
7 saw him say that there was damage as a result of the
8 fact that the company continued its business
9 operations. And I also saw him in his deposition
10 state that he feels that the most likely course and
11 the only course that he really put his finger on was
12 that they should have filed for bankruptcy.
13 Q I see.
14 Now you have testified in a number of
15 bankruptcy cases, haven't you?
16 A Yes.
17 Q As a matter of fact, I presume a large
18 part of your work as an expert witness has to do with
19 cases that arise in bankruptcy from in one context or
20 another; is that true?
21 A I don't know about a large part, but a
22 meaningful part.
23 Q Okay. And you've seen companies sold as
24 going concerns out of bankruptcy cases, haven't you?
25 A I've seen companies that have gone into

157

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 bankruptcy, restructured their debt, and emerged as
3 going concerns or have been sold as going concerns.
4 Q Yes. Adelphia's a pretty good example,
5 isn't it?
6 A Adelphia's an example.
7 Q There was an operating business that
8 continued to operate during bankruptcy and was sold
9 as a going concern, correct?
10 A Correct.
11 Q The values that are achieved in sale were
12 values of a going concern, not an under-the-hammer
13 liquidation, correct?
14 A The values reflected the buyer's intention
15 on operating as a going concern.
16 Q So when you say that Dr. Tennenbaum
17 suggests the company went into bankruptcy, you don't
18 conclude from that that he thinks the company should
19 have closed its doors and stopped operations, do you?
20 You never heard him say that in any
21 context, did you?
22 A Well, I conclude that he has a problem
23 with what the management did. And he believes that
24 there's damage associated with what management
25 continued to do.

158

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 And based on his deposition, the only
3 other alternative he provides is filing for
4 bankruptcy.
5 If they filed for bankruptcy in this
6 context, in September of 2001, you'd have a very
7 different business model, you'd have different cash
8 flows, you'd have a different situation, you'd have
9 bankruptcy costs, and you may or may not have a
10 liquidation scenario. And therefore, liquidation
11 should be one of the considerations in arriving at a
12 value as of that date.
13 Q Of the differences that might have
14 occurred, some of them might have favored the
15 company's value and some of them might have
16 disfavored, correct?
17 MR. WILLIAMSON: Objection.
18 A Relative to what?
19 Q To what it was before bankruptcy. Let me
20 give you an example.
21 Did you see any documents in this case
22 that reflected a proposal that the servicer fees paid
23 to Oakwood under its contracts to service securitized
24 loans be rejected and that Oakwood should enjoy a
25 higher priority in the waterfall from those

159

1 Pfeiffer
2 securitizations for its servicing fees?
3 A I may have seen that document.
4 Q And if that had occurred, sir, that would
5 have improved the company's cash flows; isn't that
6 true?
7 A Theoretically.
8 Q Which would have been a favorable
9 post-bankruptcy event for Oakwood's value, correct?
10 MR. WILLIAMSON: Objection.
11 A I'm not sure what time frame we're
12 analyzing here and in what context. It's hard to
13 answer the question.
14 It's hard to -- I mean certainly if the
15 company makes improvements they would, and the
16 improvements result in positive cash flow
17 adjustments, that would result in positive value.
18 But it depends on what date and it depends on -- your
19 question's very board.
20 Q Is it your position in the sentence that I
21 have quoted to you about the bond prices here on page
22 5, paragraph 3, that the market -- that the improved
23 bond prices show that the market viewed Oakwood as a
24 healthier company after September 2001?
25 A Not necessarily.

160

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 Q In fact, sir, this rise in bond prices was
3 consistent with a rise in the bond market generally
4 during that period of time; isn't that true?
5 MR. WILLIAMSON: Objection.
6 A It's my -- it's my belief that that --
7 that rise in bond prices that you have in 2001 was
8 largely a reflection on Oakwood and less of a
9 reflection of the bond market which is typically, you
10 know, more investment-grade or close to
11 investment-grade-type paper.
12 And furthermore, the statement here is not
13 necessarily focusing on the significance of the
14 improving trend, but rather that Dr. Tennenbaum
15 hasn't made any analysis to the extent -- ignores the
16 fact that although he thinks the company should have
17 gone in a very different direction, the bond market
18 does not seem to react negatively to the company
19 continuing in its same course.
20 Q All right. So you're not saying that the
21 bond price movement actually meant anything, you're
22 just saying that you don't think Dr. Tennenbaum paid
23 sufficient attention to it?
24 MR. WILLIAMSON: Objection.
25 A No.

161

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 I'm saying that it doesn't support his

3 contention, and therefore he should have -- he should

4 explain that.

5 Q All right.

6 MR. CASTANARES: I am going to mark 628, I

7 think --

8 A 629.

9 MR. CASTANARES: -- 629, it will be CSFB

10 522133. I only have one.

11 I don't have a copy for myself so if I

12 need to I'll look on with you, Justin, if I could.

13 Thanks.

14 (Marked for identification.)

15 Q In fact, sir, three days before your final

16 report this document that I have just shown you as

17 Exhibit 629 shows that in fact the earlier drafts of

18 your report were attempting to claim that the rise in

19 the bond market indicated greater value for Oakwood

20 after September 2001; isn't that true?

21 A The initial drafts of the report related

22 to the fact that the uptick reflects market

23 confidence. Yes.

24 Q Yes. And the point that was -- you

25 concurred with the point that was made by Aijun in

162

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 the e-mail that is Exhibit 629, didn't you?

3 A I concurred with part of it, and did not

4 agree with part of it.

5 Q In any event, the decision was made to

6 rewrite the language to what now appears in your

7 report; is that right?

8 (Witness reviewing document.)

9 A Yes.

10 Q Now, sir, looking at paragraph 5 on page 6

11 of your report. How do you contend that

12 Dr. Tennenbaum should have taken into account the

13 sale to Berkshire in performing his analysis?

14 A I think he should have taken it into

15 consideration in several ways.

16 First of all, the relevant end date, in my

17 view, instead of being September 30, 2002, should

18 have been the ultimate resolution of the bankruptcy,

19 in this case the sale to Clayton Homes for

20 \$375 million.

21 And secondly, the amount of the sale, the

22 \$375 million itself, and as related to in point

23 number 3 on page 6, the extent to which the

24 bondholders received recovery, I think should have

25 been analyzed, considered and reconciled and

163

1 Pfeiffer

2 explained by Dr. Tennenbaum before opining on a

3 DCF-based valuation in a vacuum.

4 Q What is the relevance of the extent of the

5 bondholder recovery to your opinion?

6 MR. WILLIAMSON: Objection.

7 A Well, if there's significant amount of

8 damage, one would have expected the bonds to have

9 traded down, potentially.

10 Q You're not saying the bonds are selling

11 for 47 percent now, are you?

12 You're talking about the bankruptcy -- you

13 talk about the bondholders ultimately received at

14 least 47 percent -- at least 47 percent recovery in

15 the text accompanying note 11 on page 6?

16 You're talking about bankruptcy dividends

17 paid to the bondholders, aren't you?

18 A Yes.

19 Q So those are a function of -- that 47

20 percent is a function of both the numerator and the

21 denominator, isn't it?

22 You divide as the numerator the total

23 amount of assets that you have to distribute to

24 creditors and as the denominator the total amount of

25 claims, correct?

164

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 MR. WILLIAMSON: Objection.

3 A I don't know if I would agree with your

4 numerator and denominator. I don't know if I could

5 agree with that equation.

6 Q Well, what does the 47 cents show relative

7 to the amount of claims?

8 A What it shows is, consistent with the

9 chart we looked at before on the bond prices, and as

10 exhibited in Exhibit 627, these bonds were traded,

11 you know, at 30 cents, at 40 cents, at 47, 50 cents

12 and so on in 2001. And then went up a little bit and

13 then down substantially towards the fall of 2002,

14 ultimately continued to trade through the end of

15 2004. And reflected a recovery of 47 cents on the

16 dollar.

17 Q So are you talking about -- so just to

18 make things clear now, the 47 cents that you refer to

19 on page 6 of your report, are you referring to the

20 level of the bond prices at some particular point or

21 are you referring to the bankruptcy dividend payable

22 to general unsecured creditors in the case?

23 A I'm referring to the ultimate bond

24 recovery at 47 percent.

25 Q And when you say bond recovery, are you

165

1 Pfeiffer
2 distinguishing bondholders from any other kind of
3 creditors?
4 A I can imagine there are some creditors who
5 did not get 47 percent; so, yes, I am distinguishing
6 them.
7 Q Okay. And do you have an idea of, say,
8 what general trade creditors got in the case?
9 A Not offhand.
10 Q So you don't have any knowledge of whether
11 the sale to Buffett was more beneficial to general
12 trade creditors than a hypothetical sale that
13 Dr. Tennenbaum advocates in 2001?
14 MR. WILLIAMSON: Objection.
15 A I didn't -- I did not do that analysis,
16 nor did Dr. Tennenbaum.
17 Q Well, sir, did you do any analysis of the
18 recovery to bondholders in the hypothetical
19 bankruptcy on the assumption that the value of the
20 assets as shown by Dr. Tennenbaum's \$350 million
21 conclusion was correct?
22 THE WITNESS: Could you repeat that
23 question, please.
24 (Question read.)
25 MR. WILLIAMSON: Objection.

166

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 A I can't answer that question.
3 Q I'll restate the question.
4 In the hypothetical bankruptcy in 2001
5 that you say should have occurred, or that
6 Dr. Tennenbaum should have considered in comparison
7 to the eventual bankruptcy, if you assume that he was
8 correct in concluding that the fair value of the
9 assets was \$350 million at the end of 2001, did you
10 make any study of what dividend such a sale would
11 have paid to creditors?
12 MR. WILLIAMSON: Objection.
13 A Again, the way the question was worded --
14 there was a lot of introductory phrases to that
15 question that I don't agree with and I can't answer
16 the question as asked.
17 Q So you don't have any way of knowing as
18 you sit here today, sir, do you, whether the
19 creditors would have gotten more if this company
20 filed bankruptcy in 2001 than they ultimately got in
21 the actual bankruptcy?
22 A I was not asked to provide an opinion on
23 that.
24 My opinion is that Dr. Tennenbaum has no
25 idea in fact if the creditors would have gotten more

167

1 Pfeiffer
2 or less in 2001 than they got ultimately. That's my
3 point.
4 Q But to answer the question that I asked
5 you --
6 A Right.
7 Q -- you don't have any idea as you sit here
8 today whether if bankruptcy had been filed in 2001
9 the creditors would have done better or worse than
10 they actually did in the actual bankruptcy, correct?
11 A I was not asked to provide that opinion.
12 Q So you don't know?
13 A I -- I haven't studied that.
14 Q Okay.
15 MR. WILLIAMSON: Tony, when you get to a
16 point could we take five minutes or 10 minutes?
17 MR. CASTANARES: Yes. Give me just a
18 second. Let me see where I am on this just to see
19 if...
20 (Pause.)
21 MR. CASTANARES: Okay. Now's a good time.
22 THE VIDEOGRAPHER: The time is 2:12 p.m.,
23 we're off the record.
24 (A recess was taken.)
25 THE VIDEOGRAPHER: The time is 2:18 p.m.,

168

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 you're on the record.
3 BY MR. CASTANARES:
4 Q Turning to page 7 of your report, sir. We
5 once again refer to your criticism of
6 Dr. Tennenbaum's use of projections that he considers
7 aggressive.
8 Is it your position that he should have
9 used more pessimistic projections than those?
10 MR. WILLIAMSON: Objection.
11 A No.
12 Q Okay. If he had used more pessimistic
13 projections than those, it would have driven the
14 values down; is that right?
15 A Generally speaking, yes.
16 Q Okay.
17 A Yes, everything else remaining the same.
18 Q Yes. If the discount rate remains the
19 same, the values would go down, right?
20 A More than the discount rate. All the
21 other assumptions in the model would have to remain
22 the same.
23 Q Okay.
24 A Then if that were the case, pessimistic
25 projections would make the value go down.

169

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

Q All right. Now, turning the page, you say that he has no knowledge of the assumptions that went behind the 2001 projections. Do you?

(Witness reading.)

A What are you referring to? I am sorry.

Q This is on page 8, paragraph 2. "He has no knowledge of the underlying assumptions that informed the creation of the 2001 projections."

Do you have such knowledge?

A I do not.

Q Turning now to page 9, paragraph 3. You discuss the Miller Buckfire projections.

A Yes.

Q What do you know about where the Miller Buckfire projections came from and the assumption that they made?

A I know what I have written in my report. That "they were created in 2003 for a stand-alone plan of reorganization developed during the bankruptcy proceeding."

Q All right. Do you know anything about the basis for preparation of the Miller Buckfire projections?

A Well, yes. I know what I just said about

170

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

the basis.

And I also know the projections assume that Oakwood emerging from bankruptcy as a smaller company having discontinued certain aspects of its business.

Q All right. Is that -- did you look at the nine-point plan that Oakwood had in late 2002 as embodied in certain Credit Suisse documents?

A I believe I've seen it.

Q And were the changes that you see here, the smaller company, et cetera, essentially reflected in the nine-point plan?

MR. WILLIAMSON: Objection.

A I have not analyzed that to the fullest extent.

Q To the best of your knowledge, sir, is it to correct to say that the Miller Buckfire projections were the company's 2002 projections as adjusted for its nine-point plan?

MR. WILLIAMSON: Objection.

A I don't know.

Q You don't know one way or the other?

A I don't know for sure.

Q As a matter of fact, other than what you

171

Pfeiffer

have written here, you have no idea whatever what assumptions underlay the Miller Buckfire projections; isn't that true?

MR. WILLIAMSON: Objection.

A I know what's written here in this paragraph about the Miller Buckfire projection.

Q And do you know whether the Miller Buckfire projections had any points of similarity or difference from the projections that were being prepared by Oakwood and Credit Suisse together in late 2002?

MR. WILLIAMSON: Objection.

A I don't know.

Q Okay. Now, once again referring to your criticism of Dr. Tennenbaum's failure to compare the results of the actual bankruptcy proceeding with a hypothetical 2001 bankruptcy which you referred to on page 9 again of your report, do you have any reason to believe that the costs associated with the hypothetical 2001 bankruptcy would have been any greater or lesser than the costs of the actual bankruptcy that occurred a year later?

A No.

Q So what is the basis of your criticism of

172

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

Dr. Tennenbaum for failing to adjust for those costs?

A The basis is that if you're comparing the value of a company as of particular dates to the ultimate bankruptcy, the ultimate bankruptcy includes those costs, and his -- his attempt to value the company as of the earlier date does not include those costs.

Q All right. And on page 10 in paragraph Roman V you say that Dr. Tennenbaum should have adjusted his discounted cash flow analyses for concerns about Oakwood's marketability, liquidity concerns and market distress in 2001.

Am I understanding you correctly?

A Yes.

Q How does the valuation professional take those factors into account in doing a discounted cash flow study?

MR. WILLIAMSON: Objection.

A If there is a feeling of distress around the company, a professional will either provide for a discount to the price to that distress or adjust the cash flows due to that distress or adjust a discount rate due to that distress or potentially provide other methodologies to allow for the fact that

173

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

there's distress.

Q Okay. Is it fair to say that the discount rate reflects two things; one being the time value of money and the other being the risk factor in the achievement of the expected cash flows?

MR. WILLIAMSON: Objection.

A That's broadly, broadly correct.

Q Okay. And so factors such as liquidity problems and others such as that are typically reflected in the valuation professional's calculation of a discount rate; isn't that correct?

MR. WILLIAMSON: Objection.

A I don't think that's a good place to put it, no.

I think that it should be considered at a discount rate at times, but I think it's much more appropriate to adjust the cash flows or adjust for a lack of marketability discount. Adjustments like that are typically more appropriate than just judgmentally adding a certain percentage to discount rate.

Q Well, part of the derivation of a discount rate is weighted average cost of capital; isn't that correct?

174

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

A I would not agree with that, no.

Q All right.

A The weighted average cost of capital is a form of a discount rate.

Q All right. When you do a discounted cash flow analysis what factors go into deriving the discount rate?

A There is the cost of debt, its weighted average between the cost of debt and the cost of equity. Cost of debt considers the cost of debt, the interest, payments reflected in the debt, or the company's debt that you would assume if it were on par with comparable companies. There's various ways to obviously do it. But from a simplistic point of view, the company's costs of debt, and then you adjust that for tax, for the fact that the -- the interest payments are tax deductible. And in arriving at a cost of equity, one would look at the rate of return expected in the marketplace and how my company or the company that's being valued, how that company's beta compares with the market at large.

Q Beta being a measure of risk?

A Broadly speaking.

Q Okay. Do you dispute the discount rates

175

Pfeiffer

derived by Dr. Tennenbaum in his report for the two discounted cash flow studies that he did?

A I haven't looked at that issue in many months, and have not provided an opinion on that.

Q You did consider at one point providing an opinion on it, didn't you?

A My firm considered providing an opinion on a discount rate.

Q And you determined that if you did quarrel with Dr. Tennenbaum's discount rate it would be to lower as distinguished from raising the amount of the discount rate; isn't that true?

MR. WILLIAMSON: Objection.

A I don't recall. I haven't reviewed those draft reports.

Q You did determine that if the discount rates were lowered that would work in plaintiff's favor as distinguished from defendant's; isn't that true?

MR. WILLIAMSON: Objection.

A That would be -- a lower discount rate would provide a higher value.

You'd have to show me the report. I don't know really what we wrote and I don't know what we

176

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

concluded. And I don't know if I concluded -- I don't think I reviewed those reports and concluded at all, actually.

Q Let me ask you to turn to page 10, paragraph Roman IV of your report where you criticize Dr. Tennenbaum for claiming that Oakwood paid more than \$20 million in fees to Credit Suisse.

Do you dispute that Credit Suisse got \$20 million for transactions related to Oakwood during that period in time?

MR. WILLIAMSON: Objection.

A I have not opined on whether they did. I don't know.

Q So you criticize him for saying this, but you don't know one way or the other whether it's true?

A I criticize him for the fact that he didn't provide an expert analysis. He just -- he just repeated what he was told.

Q You don't -- do you know whether he saw any documents?

A I don't know whether he saw documents, no.

Q And as you sit here today you don't know whether it's true or isn't true that Credit Suisse

177

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 received \$1 or \$20 million or hundred million dollars
3 in fees for transactions related to Oakwood during
4 any period of time at all, do you?
5 MR. WILLIAMSON: Objection.
6 THE WITNESS: Could you repeat the
7 question, please. I am sorry.
8 (Question read.)
9 A I have not analyzed how much Credit Suisse
10 received.
11 Q Okay. Does the term "Black-Scholes" mean
12 anything to you?
13 A Yes.
14 Q What does it mean?
15 A It's a methodology used to value options.
16 Q Okay. And does it have any utility among
17 valuation professionals for valuing the stock of an
18 insolvent company?
19 MR. WILLIAMSON: Objection.
20 A Yes.
21 Q Describe.
22 A As a company has very low stock prices or
23 has a significant amount of debt, its equity could
24 trade as an option, and one might use a Black-Scholes
25 in determining the different variables, assumptions

178

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 utilized in arriving at that option price.
3 Q You understand the basic rule to be that
4 if a company's insolvent and its assets get
5 distributed to its stakeholders, the creditors get
6 paid first, right?
7 A Right.
8 Q And only if anything is left over does
9 anything go to the stockholders, right?
10 A That's a broad characterization of what
11 typically happens, but there are many -- there are
12 bankruptcies where there's deal made for the equity
13 holders, they get a seat at the table, and sometimes
14 they get something, too.
15 Q Okay. But as a general rule, creditors
16 get paid first and then stockholders get paid; isn't
17 that the general way it works?
18 A Generally, yes.
19 Q Okay. And I think we've decided that when
20 a company is insolvent, one definition of that is
21 that the fair saleable value of its assets is less
22 than the amount required to pay its debts; is that
23 correct?
24 MR. WILLIAMSON: Objection.
25 A That's one test, yes.

179

1 Pfeiffer
2 Q Okay. And the Black-Scholes' analysis
3 helps the valuation expert explain the fact that even
4 though a company may be insolvent in that sense, the
5 stock still trades for some positive number; isn't
6 that right?
7 A A Black-Scholes can be used in that way,
8 yes.
9 Q Okay. That's the way Dr. Tennenbaum used
10 it here, isn't it?
11 A Purportedly, yes.
12 Q Okay. And you don't differ with the
13 validity of the methodology even though you may
14 differ with his conclusions, do you?
15 A No.
16 Q Okay.
17 (Pause.)
18 MR. CASTANARES: Exhibit 630 is CSFB
19 523314 through 346.
20 (Marked for identification.)
21 Q This consists of a two-page e-mail string
22 and then what appears to be one document following it
23 dated June 18, 2007.
24 Can you identify that document for me,
25 please, sir?

180

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 (Reviewing document.)
3 A It appears to be a draft of a report dated
4 June 18th, where I -- it was provided to me by my
5 staff and I revised or made comments on the report
6 through page 9.
7 Q Are there comments those that are
8 reflected in these little windows showing deleted and
9 formatted, et cetera?
10 A No. I don't think so.
11 Q Where are the comments that you made on
12 this draft?
13 (Witness reviewing document.)
14 A I don't know.
15 The comments on the side here are just
16 comments that may have preceded my review. I don't
17 know where my comments are.
18 Q How do you know that you made comments on
19 it through page 9?
20 A Because the e-mail said "Attached, please
21 find revised version with my comments through page
22 9."
23 Q Oh, I see. Okay. So actually, Exhibit
24 630, as we see it, contains the draft of the report
25 reflecting the comments that you had already made

181

1 Pfeiffer
2 through page 9; is that right?
3 A The way I understand it, this report
4 reflects John's comments on something that Robert had
5 done, and then also has some of my comments in it
6 through page 9.
7 Q Okay. And that's printed here? So what
8 we have here is the document that already has your
9 comments in it; is that right?
10 A Through page 9, yes.
11 Q Okay. Okay. And just so the record is
12 clear, the page 9 you're referring to is the one
13 that's Bates stamped 52334 -- I am sorry -- 523324?
14 (Witness reviewing document.)
15 A You want me to look at the front page?
16 Okay.
17 Q I just want to make sure that the page 9
18 is -- strike that. That's okay. I think it's clear
19 enough.
20 Now, I would like to ask you to turn to
21 page 523321, and to turn to the paragraph that reads
22 as follows: "While reasonable people can argue in
23 hindsight about the reliability of the projections
24 prepared contemporaneously over five years ago, my
25 analysis clearly shows that the projections prepared

182

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 contemporaneously were not 'extremely aggressive'
3 relative to past performance, and that there was
4 ample cushion for Oakwood's projections to be lowered
5 before the adjusted derived value of the assets would
6 become lower than the face value of the debt plus
7 fair value of the guarantees."
8 Now, sir, are the projections that you say
9 here your analysis shows were not extremely
10 aggressive the same ones that Dr. Tennenbaum used for
11 his 2001 discounted cash flow?
12 MR. WILLIAMSON: Objection.
13 (Witness reviewing document.)
14 A I don't know.
15 Q Well, any reason you chose that particular
16 term, "extremely aggressive" to highlight here?
17 A That term I think comes from Tennenbaum's
18 report. But Tennenbaum was not deposed yet. And we
19 clearly did not understand fully the source of all
20 his assumptions.
21 Q Well, here we see the previous sentence,
22 "This clearly shows that Dr. Tennenbaum's conclusion
23 that Oakwood was insolvent by 2001, even using the
24 'extremely aggressive' cash flow projections of mid
25 2001 and late 2001 is flawed."

183

1 Pfeiffer
2 Those were the projections that you say,
3 in the next paragraph, were not extremely aggressive,
4 aren't they?
5 MR. WILLIAMSON: Objection.
6 A I don't see the analysis here to be able
7 to -- I don't -- I just don't know.
8 Obviously, the sentence relates to the
9 sentence before, but I don't know if we knew for sure
10 which projections Tennenbaum was using and
11 characterizing as extremely aggressive.
12 This is a draft report. I am not really
13 sure if we had all the information in order to be
14 able to conclude that we were referring to the same
15 set of projections.
16 Q Well, what other possible set of
17 projections could it be that you are referring to
18 that are not extremely aggressive?
19 MR. WILLIAMSON: Objection.
20 A Again, the draft here refers to what we
21 believed to be Tennenbaum's projections in his
22 report, the same ones that he characterizes as
23 extremely aggressive.
24 However, sitting here today, knowing that
25 he actually was deposed and described in a little bit

184

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 more detail what the actual source of those
3 projections were, I can't be sure sitting here today
4 that when we wrote this paragraph relative to those
5 projections that we were talking about the right set
6 of projections.
7 Q Were you talking about the set of
8 projections that appeared in his report?
9 A Again, what I'm saying is sitting here
10 today, looking at this draft report, I'm not
11 100 percent sure, I'm not sure what projections -- if
12 we were referring to the right projections.
13 The paragraph refers to the projections in
14 his report, but the paragraph also could have been
15 mistaken in our assumption as to what projections he
16 used.
17 Q Well, weren't you making the assumption
18 that the projections that he used were the ones in
19 his report?
20 A We're not understanding each other here.
21 Q Well, sir, upon your oath as you sit here
22 today you know for a fact that the same set of
23 projections that you now criticize for
24 Dr. Tennenbaum -- Dr. Tennenbaum for having used
25 despite characterizing them as extremely aggressive

185

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 are the projections which you opine in this paragraph
3 were not extremely aggressive; isn't that true?
4 MR. WILLIAMSON: Objection.
5 A What I'm trying to say is that this was a
6 report written in draft with one potential rebuttal
7 of Tennenbaum being that maybe those projections were
8 not extremely aggressive.
9 But I also remember sitting here today
10 that we were unclear as to exactly what Tennenbaum's
11 sources were for all his projections. And therefore,
12 it likely became more clear after his deposition in
13 which he clarified that, and then at that point, if I
14 saw the schedules and analyzed them, I could then
15 ascertain as to whether we indeed thought the
16 projections he used were the projections that he
17 indeed did use.
18 Q You're testifying here today under your
19 oath right now that you don't know whether the
20 projections that you're referring to on page 523321
21 are the set of projections that Dr. Tennenbaum used
22 in his 2001 DCF?
23 MR. WILLIAMSON: Objection. I think he
24 just answered that.
25 A Okay. What I'm saying is once again that

186

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 the paragraph refers to what we believe to be the
3 projections that he used in his report.
4 However, I also know that as of this time
5 we asked the attorneys to clarify certain things in
6 depositions that were unclear to us. And I just
7 don't know 100 percent for sure if after clarifying
8 that we understood the projections to be the same
9 projections we understood them to be as of this date.
10 Q Well, tell me anything you ever found out
11 from the beginning of time to this moment that ever
12 would lead you to believe that the projections aren't
13 the same ones.
14 MR. WILLIAMSON: Objection. Same ones as
15 what?
16 Q Name something.
17 A What I'm saying is that they were mid
18 2001, they were described as mid 2001 and late 2001
19 projections.
20 We -- I remember being confused as to how
21 they were characterized as that, when you look at the
22 actual document and they're labeled 2002.
23 So I don't know, and what I'm saying is I
24 just don't know, I didn't draft this report, I don't
25 know what this -- I don't know what the analysis was

187

1 Pfeiffer
2 behind this. I haven't seen this report in six
3 months, and therefore I just don't know. I don't
4 want to make a statement that I'm not sure of.
5 Q Okay. Well, you may not have seen this
6 report in six months; but you did pass upon it and
7 make corrections to it in June of 2007, which is
8 about nine months ago, correct?
9 A Right. I probably haven't seen it since.
10 Right.
11 Q Okay. And this purported to be a draft of
12 testimony that you were prepared to offer in Court
13 under oath as being your professional opinion, wasn't
14 it?
15 A This was a draft of opinions that I might
16 have offered, yes.
17 Q Okay.
18 MR. WILLIAMSON: Just out of curiosity.
19 Tony, you were not going to mark the Tennenbaum
20 report and ask him about the projections that are
21 referenced in here?
22 MR. CASTANARES: I have no particular
23 reason to mark it at the moment. Thank you.
24 Q I notice that at the top of this page you
25 say, after correcting for the mistakes identified in

188

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 the bullet points above, "Oakwood's enterprise value
3 exceeded its debts and guarantees under any
4 reasonable discount rate for both the September 2001
5 and September 2002 valuation dates. See Schedules 3
6 A and 3 B."
7 First, what are Schedules 3 A and 3 B?
8 Have you produced those to me?
9 (Witness reviewing document.)
10 A I don't know.
11 Q Okay.
12 A I probably never saw them.
13 Q I haven't seen them.
14 MR. CASTANARES: And I would like to make
15 an official demand for production of those documents
16 at this time.
17 Q Leaving that aside, however. It is
18 correct for me to read that sentence as indicating
19 that Oakwood's enterprise value was far in excess of
20 the \$350 million that Dr. Tennenbaum finds by his DCF
21 study in September of 2001; isn't that true?
22 MR. WILLIAMSON: Objection.
23 (Witness reviewing document.)
24 A It's true that it says that after
25 correcting for the mistakes identified in the pages

189

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

before, that the enterprise value would go up if you corrected for those mistakes and it would exceed its debt as of both of those dates.

Q So your analysis in June of 2007, nine months ago as we sit here today, on the previous page shows the debt and guarantees to be \$470 million in September of 2001; am I right?

A That's what it shows.

Q And the study that you refer to in the next sentence at the top of page 523321 tells us that the enterprise value you found exceeded that number of \$470 million in 2001; isn't that true?

A No. You are mischaracterizing what the report says and what I believe. And you know that. In --

Q I don't know that. I would like you to explain it to me, please.

A Okay. I will.

This report does nothing to provide our opinion relative to value.

This report simply says that if you correct his errors with his methodology and his projections, you arrive at a vast -- a very different conclusion, and one that has the value exceeding its

190

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

debt.

We did not, in this report or in my final expert report, attempt to make our own opinion as to what the enterprise value was as of that date.

Q Well, what do you suppose Schedules 3 A and 3 B are?

A I suppose that they are what they say they are, which is an explanation in more technical detail as to what the errors are that are summarized in the preceding page, and what the impact of those errors are, and maybe a combination of those errors leading to a particular value.

Q So the effect of this isn't that you were saying that the value, Oakwood's enterprise value exceeds \$470 million, you were saying that Dr. Tennenbaum should have found Oakwood's enterprise value to be larger than the \$350 million number that he found; is that right?

MR. WILLIAMSON: Objection.

A I'm saying that Dr. Tennenbaum's method corrected for errors would conclude on a number that's greater than \$470 million.

I certainly don't believe that the method nor the conclusion is accurate.

191

Pfeiffer

Q In fact, sir, the next sentence of the report at 523321 says "The equity values contained in Schedules 3 A and 3 B are upwards of 1.0 billion, using a discount rate that is consistent with the view of a highly respected valuation professor and author cited as an authority by Dr. Tennenbaum."

Now, are you saying, sir, that if you took Dr. Tennenbaum's 2001 projections and applied the discount rate that's contained in Schedules 3 A and 3 B you'd get to a billion dollars in enterprise value?

MR. WILLIAMSON: Objection.

A What I'm saying is, as described in the pages that follow, is exactly that. That it's poking fun at the ridiculousness of his methodology and his cash flow.

That he uses a set of projections and slaps on a discount rate between 60 and 20 percent, and the methodology is unreasonable, speculative, and the conclusions are illogical, as if you apply that, those projections to the appropriate discount rate you would arrive at an equity value -- an enterprise value over a billion dollars.

Q What was the appropriate discount rate?

192

27/03/2008 PFEFFER, ALLEN M.

Pfeiffer

I thought you told me you didn't derive an appropriate discount rate.

MR. WILLIAMSON: Objection.

A What I told you is I didn't opine on an appropriate discount rate for purposes of my report.

I said probably I didn't recall if I opined on a discount rate otherwise.

And I'm going to look at right now this report to see if there's a discount rate.

However, even if there's a discount rate in here, that's not my opinion on what a discount rate is. It's correcting for his errors in the way he applies his discount rates based on the sources that he quotes. So --

Q So you don't really have any idea what the appropriate discount rate to apply to the September 2001 projections should be, do you?

MR. WILLIAMSON: Objection.

A I have not reached an opinion on what the discount rate should be, yes.

Q All right. Let me ask you to look back to page 523320, paragraph 6.

"Tennenbaum report provides no analysis to support the assertion that the projections he used

193

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 for the discounted cash flow were 'extremely
3 aggressive'. Furthermore, a review of Oakwood's
4 financial performance contained within the Tennenbaum
5 report does not support the assertion that the
6 projections were 'extremely aggressive'."

7 A I am sorry, what page are you on?
8 Q 320.
9 A Oh, 320.
10 Q Paragraph 6.
11 And does that help you remember, sir,
12 whether the projections that you criticized
13 Dr. Tennenbaum as having used for because they were
14 extremely aggressive are the same ones that you on
15 page 523321 say were not extremely aggressive?
16 MR. WILLIAMSON: Objection.
17 A It helps me to remember that what we were
18 looking at here is the projections themselves
19 relative to the historical performance in the report.
20 And when you look at those two things in
21 the report, it does not seem to be extremely
22 aggressive.
23 Q Okay. So is it your conclusion now that
24 the projections were not extremely aggressive?
25 MR. WILLIAMSON: Objection.

194

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 A I did not reach a conclusion on that. I
3 don't really -- I haven't really analyzed the
4 projections recently to have any opinion on that.
5 Q Okay. Let me ask you to turn to the
6 section of this report that starts at page 523334,
7 titled "Call option analysis volatility assumption."
8 A Okay.
9 Q Do you see that?
10 How far into the report does that go?
11 Could you tell me where that section ends?
12 A It ends at 337.
13 Q 337. All right. And is that essentially
14 a Black-Scholes analysis?
15 A Is that essentially what?
16 Q A Black-Scholes?
17 A I haven't read it before. I could read it
18 now and tell you. I -- I don't know --
19 Q Okay. If you could identify for me what
20 this exercise consists of.
21 MR. WILLIAMSON: Objection.
22 (Witness reading.)
23 Q Let me ask you a simpler question perhaps.
24 When you use the term "call option
25 analysis" in this document are you referring to what

195

1 Pfeiffer
2 Dr. Tennenbaum refers to as a Black-Scholes analysis?
3 MR. WILLIAMSON: Objection.
4 A Yes.
5 Q Okay. And so what starts at page 523328
6 called revised call option analysis, could you tell
7 me more about what that is, please?
8 (Witness reviewing document.)
9 A This seems to be a correction in the
10 application of Dr. Tennenbaum's Black-Scholes call
11 option analysis, and a revised analysis using some
12 corrected assumptions.
13 Q I see. All right. Now, does that revised
14 call option analysis continue through page 523342?
15 A It seems it does, yes.
16 Q And is the expected default probability of
17 the subject company a portion of the call option
18 analysis?
19 MR. WILLIAMSON: Objection.
20 (Witness reviewing documents.)
21 A Is it an assumption? Is that the --
22 Q No.
23 Is it part of the call option analysis
24 study to look at the default probability?
25 A I can't answer the question that you

196

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 asked.
3 Q What's all this default rate and default
4 probability information contained on 340, 341, 342,
5 what's that about?
6 MR. WILLIAMSON: Objection. Objection.
7 A I believe that Dr. Tennenbaum concludes on
8 default probabilities in his report as it's one of
9 the results of his analysis. And what you have here
10 is revised probabilities based on a revised analysis.
11 Q And the difference consists, just in
12 broadbrush, of your finding a lower default
13 probability for Oakwood than Dr. Tennenbaum did,
14 correct?
15 MR. WILLIAMSON: Objection.
16 A I would have to read it. I don't know.
17 Q Okay. Well, let's come to page 523341.
18 At the bottom of that page you say "The
19 key question is whether or not Oakwood's expected
20 default probability was significantly higher than the
21 overwhelming majority of companies. As shown in
22 Tables 6-1 and 6-2, Oakwood's default probability,
23 using reasonable discount rates and guarantee figures
24 based on contemporaneous projections, was consistent
25 with a strong credit rating."

197

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 Did I read that correctly, sir?
3 A You.
4 Q So what was Oakwood's credit rating in
5 2001? Fitch.
6 MR. WILLIAMSON: Objection.
7 Q Does CCC ring a bell?
8 A CCC.
9 Q What does CCC mean in Fitch language?
10 A It's below investment-grade.
11 Q Not what you would call a strong credit
12 rating, sir?
13 A It's not what I would call a strong credit
14 rating, yes.
15 Q What was Oakwood's credit rating in the
16 world of Credit Suisse at that time?
17 MR. WILLIAMSON: Objection.
18 A I'm not sure. I'm not sure right now.
19 Q Do you think Credit Suisse rated Oakwood
20 pretty high in 2001 as a credit risk?
21 MR. WILLIAMSON: Objection.
22 Q Strong credit rating?
23 MR. WILLIAMSON: Objection.
24 A What's the question?
25 Q Yeah --

198

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 A Do I think --
3 Q Relative to your statement that Oakwood's
4 default probability was consistent with a strong
5 credit rating, how do you think that comports with
6 what their actual credit rating at Credit Suisse was?
7 MR. WILLIAMSON: Objection.
8 A I think you're misunderstanding the
9 statement in the report.
10 The statement in the report is not that we
11 believe the credit rating of Oakwood to be strong as
12 of that date. It's that if you use his methodology
13 and you correct for certain assumptions it would spit
14 out an answer that would have you assigning a strong
15 credit rating to Oakwood.
16 It's not that we believe that it should
17 have a single A credit rating or anything like that.
18 We're inclined to believe that the credit
19 ratings assigned by the contemporaneous observers
20 were likely in line with what they belonged at.
21 Q So in other words, this statement, "The
22 key question is whether or not Oakwood's expected
23 default probability was significantly higher than the
24 overwhelming majority of companies. As shown in
25 Tables 6-1 and 6-2, Oakwood's default probability,

199

1 Pfeiffer
2 using reasonable discount rates and guarantee figures
3 based on contemporaneous projections, was consistent
4 with a strong credit rating," that's not your
5 statement?
6 MR. WILLIAMSON: Objection.
7 A If you read the -- this -- the paragraphs
8 before, the pages before it, you would see that we
9 we're intending -- what we're doing here is revising
10 the output of the model based on the revised inputs,
11 and that revised output results in this statement,
12 which is that you would have a default probability,
13 if you look at page 340, and you would assign a
14 discount rate of what's a 10 or 11 percent, look at
15 page 339, as of September 2001, if you assign a 10 or
16 11 percent discount rate and you ran that through the
17 model provided by Dr. Tennenbaum, what you end up is
18 with a call option value of somewhere between 5.47
19 and 6.98 and a resulting default probability of
20 somewhere between 23.6 and 29.7, which relates to an
21 implied S&P credit rating of anywhere between BB and
22 CCC.
23 And that's really the point here.
24 Q So are you saying in this sentence that I
25 read to you that you ran reasonable discount rates

200

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 through the model?
3 MR. WILLIAMSON: Objection.
4 A The sentence says that reasonable discount
5 rates would give you a very different answer in that
6 same model. Yes. I don't know where he ran the
7 model. I didn't run the model, and I honestly
8 haven't reviewed this page before now.
9 Q Sir, at the time that you prepared Exhibit
10 630, it was your belief that your client wanted to
11 contest Dr. Tennenbaum's opinion about insolvency,
12 and therefore wanted you to criticize Dr. Tennenbaum
13 as having reached values that were too low; isn't
14 that true?
15 MR. WILLIAMSON: Objection.
16 A It -- could you repeat the question, just
17 to make sure I get it right.
18 (Question read.)
19 MR. WILLIAMSON: Same objection.
20 THE WITNESS: I am really sorry, could you
21 read the second half of that question again.
22 (Question read.)
23 MR. WILLIAMSON: The same objection.
24 A I now having heard the question, I don't
25 agree with the assertion that the attorneys wanted

201

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 us to do a certain thing.
3 We, in looking at Dr. Tennenbaum's report,
4 and initially viewing it as a report on solvency,
5 looked at some of the flaws in the assumptions and
6 explored in draft form the various ways those
7 assumptions can be revised. And so -- so this is an
8 early attempt to look at those types of issues.
9 Q This was an effort to lead the reader to
10 conclude, or the person who heard your testimony to
11 conclude, that the values reached by Dr. Tennenbaum
12 were unreasonably low as distinguished from being
13 unreasonably high; isn't that true?
14 MR. WILLIAMSON: Objection.
15 A It's true that it was meant to -- this
16 draft was meant to expand on the fact that
17 Dr. Tennenbaum's conclusions could have been higher.
18 Q Okay. In other words, the answer to my
19 question is yes?
20 A Well --
21 MR. WILLIAMSON: Objection.
22 THE WITNESS: You have to ask the question
23 again to see if I could answer it yes or no.
24 (Question read.)
25 MR. WILLIAMSON: I am sorry, and now your

202

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 question is what?
3 MR. CASTANARES: That was my question.
4 MR. WILLIAMSON: No, you said -- you had a
5 secondary question that related to that question.
6 and --
7 MR. CASTANARES: No, no --
8 MR. WILLIAMSON: -- he answered the
9 previous question.
10 MR. CASTANARES: -- no. You're imagining
11 something.
12 The question stands.
13 Q Is the answer to my question yes, sir?
14 A No, the answer is not yes.
15 I was not intending on the reader to
16 conclude on my opinion being unreasonably low or
17 unreasonably high. And we were careful not to
18 conclude on an opinion as to what we thought the
19 value was.
20 It was simply to explore Dr. Tennenbaum's
21 methodology with revised, more corrected assumptions.
22 His analysis was somewhat sloppy in certain regards.
23 And it was meant to expose that, and to point out
24 that with his methodology and revised assumptions the
25 number could be higher.

203

1 Pfeiffer
2 Q At the time you prepared Exhibit 630 you
3 believed that you would be called upon to testify in
4 this case that Dr. Tennenbaum's values were unduly
5 low; isn't that true?
6 MR. WILLIAMSON: Objection.
7 A Again, I was never asked to provide that
8 opinion, and I was never -- I never agreed to provide
9 that opinion.
10 This opinion is simply -- this opinion is
11 simply drafted in an attempt to show that his
12 methodology could arrive at a much higher conclusion.
13 Q The work --
14 A It's analyt- -- it's attacking the
15 appropriateness and the veracity of the actual model
16 and conclusion and methodology and inputs more than
17 it's providing -- and it's not providing my opinion
18 of value.
19 Q All right. The work that is reflected in
20 Exhibit 630 was intended by you to be foundational
21 for eventual testimony that Dr. Tennenbaum's values
22 were too low; isn't that true?
23 MR. WILLIAMSON: Objection, asked and
24 answered for about three times now.
25 A You know, all I can say is that I'm not

204

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer
2 here providing testimony on this report (indicating),
3 and I never reached a formal opinion or a final
4 opinion on this report or any report similar to this.
5 And you can use your own best assumptions
6 as to why that is or why that isn't because I'm not
7 here to talk about that today.
8 I am here talking about this report
9 (indicating). And I'm not here to talk about why I
10 was asked to do this or what I thought I wouldn't do
11 to this. You know what, I honestly, I told you
12 before, I did not even write this report, I certainly
13 didn't produce it in final form.
14 Q The report that you now wish to talk about
15 is one in which you criticize Dr. Tennenbaum for
16 having reached values that you consider unreasonably
17 high, isn't it?
18 MR. WILLIAMSON: Objection.
19 A Absolutely not.
20 Q Well, do you dispute Dr. Tennenbaum's
21 finding of \$350 million for the value of Oakwood's
22 assets as at September 30, 2001?
23 A I have a problem with methodology and I
24 have a problem with the damages calculation, I have a
25 problem with the way he went about it, and I have a

205

27/03/2008 PFEFFER, ALLEN M.

27/03/2008 PFEFFER, ALLEN M.

1 Pfeiffer

2 problem with the dates he picked. All those things.

3 I never said that the value of 350 should

4 be higher or lower. I have absolutely no opinion on

5 that sitting here today.

6 Q Do you dispute Dr. Tennenbaum's opinion

7 that the value of Oakwood's assets at September 30,

8 2002 was \$300 million?

9 A Again, I have no opinion relative to

10 whether that value conclusion is correct or

11 incorrect.

12 My purpose sitting here today is to tell

13 you that the method in which he went about to arrive

14 at that conclusion -- on that conclusion is

15 inappropriate, speculative, based on the wrong date,

16 and so on and so forth.

17 Q But your suggestion that Dr. Tennenbaum

18 should have paid more attention to market data than

19 to his DCF calculations is intended to lead to the

20 conclusion that his values should have been lower;

21 isn't that true?

22 MR. WILLIAMSON: Objection.

23 A Not at all, no.

24 Q Sir, the only thing that's changed really

25 between today and nine months ago when you prepared

206

27/03/2008 PFEFFER, ALLEN M.

1 Exhibit 30 that included these statements in it about

2 Oakwood's strong credit rating and values of over a

3 billion dollars is the fact that you perceive that

4 your client wants you to testify to low numbers now

5 and wanted you to testify to higher numbers then;

6 isn't that true?

7 MR. WILLIAMSON: Objection.

8 A No. I did not conclude on any values then

9 or now.

10 MR. CASTANARES: I have no further

11 questions.

12 MR. WILLIAMSON: I have nothing.

13 THE VIDEOGRAPHER: Okay. The time is 3:15

14 p.m., this marks the end of the deposition. We're

15 off the record.

16 (Time noted: 3:15 p.m.)

17

18

19

20

21

22

23

24

25

207

1

2 INDEX

3

4 WITNESS EXAMINED BY PAGE

5 Allen M. Pfeiffer Mr. Castanares 4

6 EXHIBITS

7 PAGE

8 FOR IDENTIFICATION

9 625 Report of Allen M. Pfeiffer 3

10 626 Document, Bates stamped CSFB 265172

11 through 265213 122

12 627 E-mail string, Bates stamped CSFB 519279

13 through 519291 125

14 628 Document, Bates stamped OHCLT 02616

15 through 02635 134

16 629 Document, Bates stamped 522133 162

17 630 Document, Bates stamped CSFB 523314

18 through 346 180

19 ***

20 DIRECTION NOT TO ANSWER

21 PAGE LINE PAGE LINE

22 21 24 22 6

23 22 12 52 21

24 56 11

25

208

27/03/2008 PFEFFER, ALLEN M.

1

2 ***

3 REQUEST FOR INFORMATION AND DOCUMENTS

4 PAGE LINE

5 189 14

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

209

27/03/2008 PFEFFER, ALLEN M.

ACKNOWLEDGMENT

STATE OF NEW YORK:

COUNTY OF NEW YORK:

I, ALLEN M. PFEIFFER, hereby certify that I have read the transcript of my testimony taken under oath on the 27th day of March 2008, that the transcript is a true, complete and correct record of what was asked, answered, and said during the deposition, and that the answers on the record as given by me are true and correct.

ALLEN M. PFEIFFER

Signed and subscribed to before me
this day of

Notary Public

210

27/03/2008 PFEFFER, ALLEN M.

CERTIFICATE

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

I, COLETTE CANTONI, a Registered Professional Reporter and a Notary Public within and for the State of New York, do hereby certify that the foregoing deposition of ALLEN M. PFEIFFER, was taken before me on the 27th day of March 2008.

That the said witness was duly sworn before the commencement of his testimony; that the said testimony was taken stenographically by me and then transcribed.

I am not related by blood or marriage to any of the said parties nor interested directly or indirectly in the matter in controversy; nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of April 2008.

COLETTE CANTONI

211

27/03/2008 PFEFFER, ALLEN M.

\$	22] [185:11] [187:7]	[145:21] [146:7] [148:15,18	[68:15] [73:6] [101:16,17]
\$1 [178:2]	10105 [2:]	,25] [149:2] [150:5] [151:15	[112:23] [118:14,15,25]
\$1.55 [84:9] [130:17] [133:16	102.3 [129:20] [130:13,16,21]	,21,25] [152:2,9] [155:22]	[119:14,15,21,22] [120:5,6
,19,22] [134:2]	[135:4] [138:24,25]	[156:7,24] [157:4] [159:6]	,19] [121:21] [124:16]
\$1.65 [84:4,8]	11 [84:22] [86:10] [164:15]	[160:24] [161:7] [162:20]	[129:9] [130:25] [133:14]
\$100 [39:25] [41:10,18]	[200:14,16] [208:22]	[165:12] [166:13] [167:4,9	[135:11] [137:16,23] [138:
\$117 [131:19]	11:30 [83:15]	,20] [168:2,8] [170:4,9]	20] [139:9,10] [140:14]
\$117.1 [130:19] [138:20]	11:38 [83:18]	[172:18,21] [173:13] [183:	[142:7,18] [143:12] [144:2]
\$120 [27:8,13] [33:18]	117 [131:21,25] [132:4]	11,23,25] [186:22] [187:18]	[163:17] [165:11] [205:22]
\$150 [127:6]	[135:22] [138:23]	[189:4,21] [190:8,13]	[206:7] [207:2]
\$190 [127:15] [138:14]	117.1 [130:21] [139:5,11]	[192:9] [193:18] [198:5,20]	300 [26:15] [64:5] [138:6,7]
[140:13] [141:4,16,21]	12 [208:21]	[200:15] [205:22]	30th [20:2,5,8] [21:23]
\$20 [177:8,10] [178:2]	12:40 [128:20]	2002 [49:6,10,12] [58:7,10,25]	[52:9] [53:19,20] [54:4,23]
\$230 [90:6,16] [109:22]	12:48 [136:15,17]	[70:3,9] [72:23] [73:6,25]	[55:8] [56:7] [72:25] [102:15
\$3 [26:8] [33:21]	120 [33:19]	[87:2] [94:16] [101:17]	,16] [125:21] [126:2] [131:2]
\$300 [26:19] [27:7] [33:20]	122 [208:]	[103:2] [112:6,11,22]	320 [194:8,9]
[206:8]	125 [208:12]	[113:9] [114:21] [118:12,14	337 [195:12,13]
\$350 [88:11,15] [166:20]	134 [208:]	,15,25] [119:15,22] [120:6]	339 [200:15]
[167:9] [189:20] [191:18]	1345 [2:10] [3:10]	[123:11,22] [131:2,18]	340 [197:4] [200:13]
[205:21]	14 [135:10] [209:5]	[132:12] [133:14] [135:11]	341 [197:4]
\$373 [98:10] [105:19] [106:10	14.8 [130:18,21] [139:3]	[137:16] [138:17,20] [139:	342 [197:4]
,25]	15 [8:23] [140:11,12,20]	10] [143:18] [144:2] [148:22	346 [180:19] [208:16]
\$375 [88:4] [98:17] [163:20,22]	150 [127:14,19] [131:12]	,24] [149:3] [156:18] [163:17]	350 [141:6,10,23] [206:3]
\$39,554,000 [121:20]	[137:25] [138:7]	[165:13] [171:8,19] [172:12]	373 [90:17] [94:13] [98:12,13
\$4.15 [120:21] [121:12]	159 [131:21,25] [132:4]	[187:22] [189:5] [206:8]	,16] [104:6] [105:3,15]
\$4.23 [84:3]	162 [208:]	2003 [8:13] [73:11] [86:24]	[107:12,14] [108:3,6,7,8,12
\$40 [124:11] [127:13] [137:19]	18 [180:23]	[90:18] [91:8] [98:10]	,15,18,21]
[138:10]	180 [208:16]	[104:7] [111:15] [113:13]	375 [98:12,13] [105:15]
\$42 [131:4]	185 [122:24]	[170:19]	39 [124:11] [131:11] [138:9]
\$47 [125:23]	189 [138:14] [209:5]	2003/2004 [112:24]	
\$470 [190:7,13] [191:16,23]	189something [138:14]	2004 [104:7] [165:15]	4
\$49 [135:18]	189-something [138:14]	2007 [20:2,5] [21:5,23]	
\$50 [126:5,13,16] [137:20,22]	18th [181:4]	[22:5,11,15,24] [52:14,20]	4 [84:17] [115:6,20] [208:]
[138:3]	190 [127:19] [128:4] [129:7]	[54:4] [56:3,5,7] [180:23]	4.11 [84:11]
\$51.50 [125:23]	[131:14] [139:11] [140:19]	[188:7] [190:5]	4.13 [84:11]
\$60 [135:5]	[141:10]	2008 [3:8] [210:6] [211:9,19]	4.15 [138:10]
\$73 [139:25]	1901 [2:5]	205 [3:6]	4.23 [84:9]
\$8.1 [135:12]	1970 [106:2]	20750 [3:6]	40 [27:7] [127:19] [165:11]
\$90 [41:19]	1992 [142:18,22] [143:12,15]	20th [133:18]	42 [131:23] [132:4]
	2	21 [208:20,21]	47 [110:14] [164:11,14,19]
0		22 [208:20,21]	[165:6,11,15,18,24] [166:5]
01 [62:8,13] [64:7,12] [66:20	2 [83:19] [136:16] [170:7]	23.6 [200:20]	49 [135:22]
,25] [72:17] [84:23] [102:15]	2:12 [168:22]	230 [62:8,12] [90:17] [91:2]	49.8 [130:8] [138:23]
[124:10]	2:18 [168:25]	24 [208:20]	
01/02 [59:10,15]	20 [192:19]	2624 [56:15]	5
02 [102:16]	200 [141:23]	265172 [122:17] [123:5]	
02616 [134:22] [208:13]	2000 [49:8]	[208:10]	5 [84:3] [115:6,21] [131:11,23]
02618 [134:25]	2001 [49:3,4,14] [65:18]	265185 [123:9] [129:10,14,18	[155:19] [160:22] [163:10]
02635 [134:22] [208:]	[68:7,12,15,18,23] [69:9,14	,23,24] [138:18]	5.47 [200:18]
02s [103:13]	,16,23] [70:2,9] [73:25]	265213 [122:17] [208:]	50 [88:7] [126:17] [134:2]
	[85:11,17] [86:2,23] [87:2,20]	27 [3:8]	[138:3,6,7] [140:22] [141:22]
	[88:6,12,15,20] [89:2,7,16]	27th [210:6] [211:9]	[165:11]
	[90:8] [91:6] [92:8] [94:13]	28 [125:25]	50something [134:2]
	[95:3,18] [101:16] [102:24]	29.7 [200:20]	50-something [134:2]
	[103:17] [104:6] [105:2,8,14]	29th [17:19]	519279 [125:13] [208:]
	[106:2] [108:19,20,23]	2nd [211:19]	519291 [125:13] [208:12]
	[109:21] [110:7] [111:13,17		52 [208:21]
	,21,24] [112:4,21] [113:7]	3	52.5 [130:11] [138:22]
	[118:11,25] [119:14,21]	3 [84:17] [137:5] [155:20]	521703 [58:3]
	[120:5,20] [121:21] [123:10	[160:22] [163:23] [170:12]	522133 [162:10] [208:]
	,24] [124:2,16] [125:21,25]	[189:5,6,7] [191:6,7] [192:	523314 [180:19] [208:]
	[126:6] [129:9] [130:25]	4,10,11] [208:9]	523320 [193:23]
	[131:11] [132:7,10] [137:16	3:15 [207:14,17]	523321 [182:21] [186:20]
	,19,24] [139:9] [140:14]	30 [21:5] [22:5,10,15,24]	[190:11] [192:3] [194:15]
	[142:8,24] [144:11,13,25]	[52:14,20] [56:3,5] [65:18]	523324 [182:13]
			523328 [196:5]
1			
1 [83:16] [84:18] [115:15,17]			
1.0 [192:4]			
1/8 [59:11,15]			
1:30 [137:3,4]			
10 [8:23] [41:18] [84:4]			
[140:10,19] [168:16] [173:			
9] [177:5] [200:14,15]			
10:37 [51:17]			
10:51 [51:20]			
100 [81:17] [82:11,14] [141:			

27/03/2008 PFEFFER, ALLEN M.

523334 [195:6]
52334 [182:13]
523341 [197:17]
523342 [196:14]
56 [208:22]
57 [133:19,22]

6
6 [163:10,23] [164:15] [165:19] [193:23] [194:10] [197:22] [199:25] [208:20]
6.98 [200:19]
60 [192:19]
61 [197:22] [199:25]
6-1 [197:22] [199:25]
62 [197:22] [199:25]
6-2 [197:22] [199:25]
624 [57:21] [66:8] [75:11] [81:25]
625 [3:2] [81:20] [82:3,22] [83:6,24] [84:15] [208:9]
626 [122:16] [129:16,17,18] [133:15] [135:5] [208:10]
627 [125:12] [129:10] [137:20,23] [165:10] [208:]
628 [134:19] [162:6] [208:13]
629 [162:8,9,17] [163:2] [208:]
630 [180:18] [181:24] [201:10] [204:2,20] [208:]
68 [135:22]

7
7 [59:16] [169:4]
77 [59:11]
78 [59:16]
704 [59:7] [62:7]
705 [66:8] [75:10]
73 [139:12]

8
8 [59:11,15] [170:7]

9
9 [121:7,17] [170:12] [172:19] [181:6,19,22] [182:2,6,10,12,17]
9,531,000 [121:13]
9.3 [121:3] [122:3] [138:11]
9.5 [124:2]
9.53 [123:22]
9.531 [122:4]
9.something [121:7]
9.-something [121:7]
9:36 [3:9]
90067 [2:]
900676013 [2:]
90067-6013 [2:]

A
a.m [3:9] [51:17,20] [83:15,18] ability [46:5] [156:14]
able [50:10] [65:14] [66:5] [91:20] [92:8] [95:22] [152:14] [184:6,14]
above [189:2]
absent [156:9]
absolutely [205:19] [206:4]
abundance [9:14]
academic [9:13]
accepts [85:17]
accompanying [164:15]
accomplish [104:13]
according [98:16] [120:23] [147:18,20]
account [28:23] [44:18] [45:3] [104:5] [111:14] [113:13] [133:13] [163:12] [173:17]
accurate [149:21] [191:25]
achievable [96:8]
achieve [95:23] [153:21]
achieved [87:19,20] [89:13] [92:8] [94:12] [97:8,11] [102:24,25] [104:6] [158:11]
achievement [174:6]
acquisition [8:12]
acted [103:17,18]
acting [10:6] [74:2]
action [85:25] [97:22]
actions [50:2]
active [60:6]
actual [28:5] [65:11] [84:21] [85:9,16] [86:9,23] [87:19] [89:6] [92:9] [94:16] [96:9] [98:6,9,24] [103:15] [105:3,7,14] [110:16] [167:21] [168:10] [172:17,22] [185:2] [187:22] [199:6] [204:15]
actually [71:10] [83:9] [94:4] [97:12] [103:23] [125:15] [126:15] [139:11] [144:15] [148:13] [156:16] [161:21] [168:10] [177:4] [181:23] [184:25]
adam [61:17]
add [15:14] [27:11] [30:23] [31:6] [91:2] [113:10] [115:10] [127:13] [138:22] [139:2,16]
added [137:15] [138:19] [139:8]
adding [62:19] [174:21]
addition [44:6] [47:10] [109:13,14]
additional [135:18]
adelphias [158:4,6]
adequately [28:3]
adjust [46:20] [104:16] [107:21] [108:6,7] [173:2,22,23] [174:18] [175:17]
adjusted [107:14] [108:12,13,15,18,20] [141:4] [171:20] [173:11] [183:5]
adjusting [104:18,19] [107:23] [141:21]
adjustment [47:2] adjustments [29:7,18,19] [30:7] [32:17,20] [46:3,21] [104:22] [126:22] [127:12,14,17,22] [129:4] [140:3] [141:4,19] [143:5] [146:20] [160:17] [174:19]
advice [11:14] [75:24]
advised [79:6]
advisors [14:9]
advocates [166:13]
afterwards [112:8]
again [7:24] [12:22] [17:13] [27:17] [34:10] [44:2] [64:4] [73:25] [75:10] [78:9] [90:20] [93:23] [97:19] [110:24] [112:10] [123:3] [129:10] [131:17] [143:19] [150:8] [167:13] [169:5] [172:15,19] [184:20] [185:9] [186:25] [201:21] [202:23] [204:7] [206:9]
aggressive [144:25] [145:5,14,18,22,25] [146:5,8,15,18,23] [147:12,13] [150:10,15] [151:22] [152:5] [169:7] [183:2,10,16,24] [184:3,11,18,23] [185:25] [186:3,8] [194:3,6,14,15,22,24]
ago [17:20] [36:21] [37:17] [56:20] [64:10] [94:21] [106:7] [107:3] [126:9] [182:24] [188:8] [190:6] [206:25]
agree [101:22,23] [110:24] [129:6] [139:14] [163:4] [165:3,5] [167:15] [175:2] [201:25]
agreed [204:8]
ahead [29:17]
aijun [61:8,14,20,22] [162:25]
a-i-j-u-n [61:14]
aint [19:17]
airlines [71:16,19]
al [3:13,15]
alleges [103:16]
allen [3:12] [83:20] [137:6] [208:9] [210:5,] [211:8]
allow [13:22] [23:7,17] [91:12] [107:22] [116:18] [126:21] [173:25]
allowance [147:15]
allowed [113:22] [114:10]
allowing [72:10]
allows [43:3] [71:8] [109:12]
alone [31:5]
already [52:5] [56:19] [58:14,16] [60:14,23,25] [71:19] [106:6] [111:9] [156:13] [181:25] [182:8]
alternative [53:8] [67:5] [159:3]
alternatives [67:12,15]
although [114:25] [161:16]
altogether [95:13]
always [8:24]
am [18:8] [21:25] [23:6] [24:15] [28:9] [30:5] [32:7] [35:17] [41:23] [50:6] [52:4,12,22] [55:12] [57:25] [66:3] [77:8] [83:11] [95:5] [96:15] [100:13] [101:10] [106:10] [107:10] [108:3] [110:2] [115:14,16,18,19,23] [121:14] [122:15,23] [123:4,9] [124:3,25] [125:12] [129:21,23] [130:13] [132:23] [134:21,24] [138:20] [142:23] [143:16,18] [151:18,24] [152:4] [162:6] [166:5] [168:18] [170:6] [173:14] [178:7] [182:13] [184:12] [190:8] [194:7] [201:20] [202:25] [205:8] [211:14,16]
americas [2:10] [3:11]
among [89:18] [96:16] [119:17] [178:16]
amount [6:14] [10:18] [11:3] [12:10,11] [26:13] [50:10] [87:19,20,22] [88:21] [94:14] [163:21] [164:7,23,24] [165:7] [176:12] [178:23] [179:22]
ample [183:4]
analyses [87:2] [102:20] [109:7] [173:11]
analysis [14:4] [16:11,14,15] [17:5,7,9,12] [18:8] [20:19] [21:15] [22:4] [23:21] [28:9,13] [35:5,12,24] [36:20] [37:22] [38:5] [41:22] [43:22,23] [44:3,4,15,20,25] [46:25] [48:5,7] [53:22] [60:11] [62:15,18] [63:14] [67:2] [68:20] [88:9] [90:11,20] [91:6,14] [99:21] [103:24,25] [104:3,14] [105:11] [106:16,18] [109:3,10,15] [110:4] [111:25] [112:11] [118:8,20] [139:20] [140:8] [142:4] [143:2,11] [144:6] [146:3] [148:4] [150:25] [151:8] [152:14] [161:15] [163:13] [166:15,17] [175:7] [177:19] [180:2] [182:25] [183:9] [184:6] [187:25] [190:5] [193:24] [195:7,14,25] [196:2,6,11,14,18,23] [197:9,10] [203:22]
analyst [14:15]
analysts [14:10,16] [47:15]
analyt [204:14]
analyze [16:6] [23:14] [30:24] [45:15] [47:11] [89:19] [139:23] [140:17] [149:23]
analyzed [118:22] [134:13] [163:25] [171:15] [178:9] [186:14] [195:3]
analyzing [98:22] [160:12]
angeles [2:] [3:6,24]
answer [20:14] [22:2,16]

27/03/2008 PFEFFER, ALLEN M.

[23:7,11,17] [29:15] [38:11]
 [44:22] [52:7,23] [56:2,12]
 [80:25] [87:5,10] [100:15,16]
 [106:13] [110:10] [112:16]
 [113:11] [126:16] [127:20]
 [133:3] [143:12] [144:2,10]
 [149:24] [160:13] [167:2,15]
 [168:4] [196:25] [199:14]
 [201:5] [202:18,23] [203:13,
 14] [208:18]
answered [31:20] [106:4,5,6]
 [108:25] [151:4,13] [186:24]
 [203:8] [204:24] [210:7]
answering [19:11] [141:14]
answers [100:15] [210:]
anybody [18:9,19] [19:3]
 [21:6] [51:5] [62:4] [76:25]
 [77:5,13,16,17,19] [78:3,6,
 7,10] [117:16] [149:11]
anyone [42:17]
anything [8:2] [13:4] [20:17,
 22] [47:3] [74:14] [77:20]
 [81:14] [87:7] [103:12]
 [107:24] [111:25] [112:2,3,
 7,14] [113:17] [118:13]
 [156:22] [161:21] [170:22]
 [178:12] [179:8,9] [187:10]
 [199:17]
anyway [82:9]
anywhere [200:21]
apparently [66:11] [84:2,4]
appear [125:16] [130:5]
appeared [185:8]
appearing [125:14]
appears [76:4] [125:2]
 [163:6] [180:22] [181:3]
apples [66:12] [90:21,22]
 [91:7]
application [31:17] [196:10]
applied [192:9]
applies [30:12] [193:14]
apply [21:17] [104:20]
 [192:21] [193:17]
applying [104:23]
approach [14:2] [15:11,18,21]
 [25:7] [27:10] [32:11]
 [33:7] [34:14] [43:24,25]
 [93:9,13,16] [107:20]
 [115:9,25] [116:18,25]
 [117:3] [118:11,12] [119:11,
 13] [149:24]
approaches [53:8] [93:20]
 [106:18] [144:4] [152:18]
appropriate [19:23] [30:9]
 [85:13] [91:11] [96:15]
 [97:6] [98:15] [106:19]
 [113:8,9] [116:14,20]
 [143:2,4,13] [144:4,7,11,13]
 [146:20] [174:18,20] [192:
 22,25] [193:3,6,17]
appropriately [108:22]
appropriateness [111:19]
 [113:23] [146:11] [204:15]
approximately [26:16]
 [64:4] [84:7,11] [88:4]
 [127:10] [131:13,17] [133:
 17] [135:10] [138:12,14]
approximates [144:16]
approximation [126:7,14,17,
 18]
april [20:2,5,8] [21:5,23]
 [22:5,10,15,24] [52:14,20]
 [54:4] [56:7] [211:19]
arent [164:17] [184:4] [187:
 12]
argue [182:22]
arise [50:21] [157:19]
around [109:22] [173:20]
array [14:11]
arrive [34:6] [53:23] [65:14]
 [91:12] [99:24] [103:23]
 [104:22] [111:4] [132:20]
 [150:17] [153:4,11,13]
 [190:24] [192:23] [204:12]
 [206:13]
arriving [93:21] [111:17]
 [152:19] [159:11] [175:19]
 [179:2]
ascertain [142:4] [186:15]
ascertained [133:7]
ascribes [62:12]
aside [189:17]
ask [18:7] [20:12,16,19,25]
 [29:21] [32:8] [40:10]
 [41:4] [53:15] [56:18]
 [57:24] [59:6] [66:3] [69:9]
 [75:25] [99:20] [112:5]
 [122:15] [134:24] [155:19]
 [177:5] [182:20] [188:20]
 [193:22] [195:5,23] [202:22]
asked [8:7] [13:6] [23:12,13,
 24] [24:5,7] [31:20] [33:3]
 [36:19] [38:11] [47:21]
 [48:6] [53:11] [54:20]
 [55:14,16] [56:6,7] [69:2]
 [71:15] [74:24] [76:23]
 [83:23] [86:20] [94:21]
 [106:3] [111:22,23] [112:17,
 20] [113:4] [137:13] [143:9,
 10,24] [155:11] [167:16,22]
 [168:4,11] [187:5] [197:2]
 [204:7,23] [205:10] [210:7]
asking [10:21,22] [11:7]
 [18:4] [25:19,21] [29:15]
 [31:11] [44:25] [52:9]
 [53:16] [55:11] [95:5]
 [96:15] [101:10,22] [105:23]
 [106:10] [107:10,11] [115:
 15,23] [127:19]
aspect [79:24] [80:20]
aspects [54:21] [171:5]
assertation [201:25]
assertion [193:25] [194:5]
assess [106:19]
assessment [63:21]
asset [4:14] [14:7] [43:23,24,
 25] [52:25] [93:15]
assetbyasset [93:15]
asset-by-asset [93:15]
assets [9:18] [10:18] [11:2]
 [12:9,18,24] [31:4,7,24,25]
 [32:3,24] [33:8] [34:7]
 [36:8] [45:21] [51:25] [52:15,
 17] [53:5,9,18] [70:4,24]
 [71:16] [73:19,22] [74:3]
 [88:25] [92:18] [94:12]
 [95:10] [96:5] [98:9] [101:15,
 16] [102:14,16] [106:25]
 [111:23] [112:6,21,22]
 [113:6] [116:25] [119:14,15,
 21,22] [135:17] [142:7,17]
 [143:11,25] [153:6] [154:14,
 21] [164:23] [166:20]
 [167:9] [179:4,21] [183:5]
 [205:22] [206:7]
assign [27:8] [200:13,15]
assigned [4:14] [199:19]
assigning [16:8] [133:6]
 [199:14]
assignment [54:16] [55:4]
 [76:11] [77:3] [79:25]
 [80:21] [111:18,21] [113:14,
 25]
assignments [75:13] [77:3]
assist [23:12]
assistance [9:5] [82:16,17]
associated [96:2] [132:17]
 [158:24] [172:20]
associates [47:20,22,23]
 [79:10] [80:3]
assume [10:5,8] [29:22]
 [67:8,9,10] [68:6] [69:8]
 [167:7] [171:3] [175:13]
assumed [90:25]
assumes [66:9,15,17]
 [71:3] [154:4]
assuming [70:8] [93:12]
 [132:18]
assumption [10:13] [31:8]
 [66:19,25] [67:6,7] [68:11]
 [69:10] [70:13,24] [71:9]
 [166:19] [170:17] [185:15,17]
 [195:7] [196:21]
assumptions [21:16] [67:7]
 [105:19] [169:21] [170:3,8]
 [172:3] [178:25] [183:20]
 [196:12] [199:13] [202:5,7]
 [203:21,24] [205:5]
asterisk [75:11]
attached [181:20]
attacking [204:14]
attempt [4:22] [5:14,20,24]
 [6:16] [7:16] [21:17] [40:3]
 [51:5,6] [154:13] [173:6]
 [191:4] [202:8] [204:11]
attempted [109:19]
attempting [9:17,20] [13:12,
 13] [28:13] [39:7] [111:12]
 [162:18]
attend [100:23]
attended [57:18] [100:22]
attention [51:2] [118:10]
 [119:10,19] [122:23] [144:
 15] [161:23] [206:18]
attorneys [2:] [82:23] [187:5]
 [201:25]
audited [114:20]
author [192:7]
authored [147:2]
authority [91:16] [192:7]
automatically [139:25]
available [15:25] [59:21]
 [60:7] [116:5,7,10,17]
 [132:21]
avenue [2:5,10] [3:11]
avenues [75:5]
average [40:24] [41:3,5]
 [174:24] [175:4,10]
aware [21:5] [114:3,17,25]
 [154:24]

B

b2 [74:11]
back [13:24] [25:8] [31:6]
 [42:8] [55:23] [66:6] [98:20]
 [114:14] [193:22]
balance [31:8] [32:3] [43:25]
bankruptcies [179:12]
bankruptcy [3:15] [58:23]
 [69:14,16] [70:2,18,23]
 [71:4,19] [72:11,13] [84:21]
 [85:10,16,17,19,24] [86:10,
 11,23,24] [87:19,21] [88:18,
 20] [89:2,7,8,12,18] [91:7,15]
 [92:3,7,9] [93:12] [94:13,15,
 16] [96:2,3,9,10] [97:9,12,24,
 25] [98:2,9] [102:25] [103:
 2,13,15,22] [105:2,3,7,8,14]
 [106:2,21] [107:2] [108:19,
 23] [109:13,20] [110:6,13,17]
 [112:2] [134:4] [144:8]
 [154:22] [156:6] [157:12,15,
 19,24] [158:2,8,17] [159:4,
 5,9,19] [163:18] [164:12,16]
 [165:21] [166:19] [167:4,7,
 20,21] [168:8,10] [170:21]
 [171:4] [172:17,18,21,23]
 [173:5]
base [51:8] [80:7]
based [22:2] [29:8] [62:14,22]
 [69:4] [72:3] [79:5] [81:5]
 [93:14] [101:14] [102:14,19]
 [105:18] [113:24] [126:13]
 [127:22] [146:12] [159:2]
 [193:14] [197:10,24] [200:
 3,10] [206:15]
bases [89:18]
basic [73:22] [179:3]
basics [28:11]
basis [24:4] [48:22,25]
 [51:2] [67:25] [68:15]
 [70:19] [71:17] [80:11,13]
 [87:5,7,25] [89:9,15] [111:
 13] [113:12] [114:11] [146:
 12,25] [150:12,18,19]
 [170:23] [171:2] [172:25]
 [173:3]
bates [58:2] [122:24] [134:20]
 [182:13] [208:10,,13,,]
bb [200:21]
bearing [122:16]
bears [125:13]
became [154:24] [186:12]

27/03/2008 PFEFFER, ALLEN M.

become [183:6]
becomes [51:3]
begin [22:21] [92:11] [125:14]
beginning [83:19] [137:5]
[155:20] [187:11]
beginnings [103:24]
begins [28:13] [37:9] [38:5]
behalf [100:7]
behind [83:5] [84:14] [170:4]
[188:2]
belief [9:3] [47:13] [85:18]
[88:2,5] [156:22] [161:6]
[201:10]
believe [12:22] [14:5] [28:8]
[42:16] [54:2,20] [61:14]
[63:9,12] [65:7] [85:22]
[87:5] [88:9] [97:5] [100:20]
[109:19] [114:18,19,23]
[117:14] [123:20] [132:5,11]
[133:25] [142:18] [144:3]
[148:15,16] [149:6,9,11,14,
20] [151:13] [155:16]
[171:10] [172:20] [187:2,12]
[190:15] [191:24] [197:7]
[199:11,16,18]
believed [144:25] [184:21]
[204:3]
believes [85:7] [94:25]
[144:20] [156:4] [158:23]
bell [198:7]
belonged [199:20]
below [198:10]
beneficial [166:11]
berkshire [163:13]
besides [5:4] [6:17] [7:14]
[67:15] [99:5] [103:8]
besio [61:8,15]
b-e-s-i-o [61:15]
best [18:18] [40:12] [171:17]
[205:5]
beta [175:22,23]
better [32:8] [70:3] [114:9,10]
[142:11] [168:9]
beyond [6:20] [23:10] [99:22]
[112:4,15]
bids [14:7]
bigger [87:12]
billion [32:22] [33:21] [192:
4,11,24] [207:4]
bit [5:6] [63:6] [136:10]
[165:12] [184:25]
black [178:11,24] [180:2,7]
[195:14,16] [196:2,10]
blacksholes [178:11,24]
[180:2,7] [195:14,16]
[196:2,10]
black-scholes [178:11,24]
[180:2,7] [195:14,16]
[196:2,10]
blanket [144:13]
blood [211:14]
board [11:14] [160:19]
bond [22:9] [24:13] [59:17,22]
[65:14] [124:15] [125:3,5,16,
20] [128:7] [129:5,20]
[130:25] [137:15,18,25]
[160:21,23] [161:2,3,7,9,17,
21] [162:19] [165:9,20,23,25]
bondholder [164:5]
bondholders [163:24]
[164:13,17] [166:2,18]
bonds [7:7,9] [15:16] [24:24]
[26:8,18,20,25] [27:6,13]
[32:13] [33:21] [60:3,7]
[62:21] [63:22] [64:8]
[65:20] [115:11,25] [124:15]
[125:21] [126:5,14,24]
[131:12] [135:4] [137:23]
[138:20] [139:9] [141:18]
[155:23] [156:16,20] [164:
8,10] [165:10]
bondtraded [130:25]
bond-traded [130:25]
boston [2:9] [3:14]
bottom [75:12] [134:21]
[155:20] [197:18]
boulevard [3:6]
break [51:15,16] [83:23]
[134:16] [136:2]
bring [39:25] [56:18] [141:5]
broad [12:14,23] [14:11]
[19:2] [22:17] [23:8,15,18]
[31:11,19] [47:2] [52:10]
[53:12] [54:22] [77:6]
[86:16] [179:10]
broadbrush [197:12]
broaden [46:15]
broadly [23:23] [99:10]
broadly [23:14] [32:16,19]
[35:14] [36:2] [53:4] [54:21]
[62:17] [118:7] [154:17]
[174:8] [175:24]
buckfire [170:13,16,23]
[171:18] [172:3,7,9]
buffett [73:10,23] [74:12]
[88:22] [90:18] [91:8]
[94:14] [98:10,17] [105:15]
[111:15,20] [112:24] [113:
13] [166:11]
bullet [189:2]
bundle [56:17]
business [10:3] [23:20]
[45:21,23,24,25] [49:20]
[50:14,18] [58:8,12,21]
[59:2,4,5] [67:17] [68:17]
[73:19] [74:6,15] [75:6]
[96:20,25] [97:23,25]
[100:23] [114:11,12] [144:
21] [157:8] [158:7] [159:7]
[171:6]
businesses [58:22] [74:3]
[92:21]
buy [10:6] [154:14]
buyer [9:25] [152:22,23]
[153:16,18] [154:2,4,8,10,11,
14] [155:9,18]
buyers [92:15] [153:19,23]
[154:25] [155:2,5] [158:14]
buying [29:4] [44:10]

C

calculation [99:18,24]
[101:14] [102:3] [113:5]
[174:11] [205:24]
calculations [84:19] [131:19]
[206:19]
california [2:] [3:7]
call [25:4] [43:25] [138:4]
[195:7,24] [196:6,10,14,17,
23] [198:11,13] [200:18]
called [16:10] [24:20] [32:14]
[42:3] [60:10] [89:22,25]
[96:17] [116:2] [196:6]
[204:3]
calls [22:18]
cant [11:12] [18:13,16]
[58:19] [63:3] [70:14]
[117:17] [134:11] [142:3]
[150:24] [167:2,15] [185:3]
[196:25]
cantoni [3:24] [211:5,23]
cap [16:2]
capacity [19:6,9] [20:9]
[75:8]
capital [40:24] [41:3,6]
[46:4,6] [134:5] [174:24]
[175:4]
capitalization [6:13] [139:23]
care [124:3]
career [8:16]
careful [47:11,16] [55:7]
[144:15] [203:17]
carefully [45:15]
case [12:5,7] [16:22] [17:16,
24] [18:5] [19:7] [20:10]
[23:23,25] [25:19,24]
[26:8] [45:6] [47:19] [54:21]
[75:20] [76:11] [77:3,20]
[84:21,22] [86:17] [94:5]
[101:9] [116:18] [149:16]
[156:9] [159:21] [163:19]
[165:22] [166:8] [169:24]
[204:4]
cases [46:8] [102:20] [157:15,
19,24]
cash [9:2] [14:3] [15:9]
[16:13] [17:11] [18:8,19,21]
[19:4] [21:5,9,13,15,19,22]
[30:10,25] [34:13] [35:4,9,12]
[36:2,3,4,5,10,17,20,22]
[37:9,15,18,22,24] [38:5,6,
13,14,18,23] [39:3,4,16,25]
[40:16,20,23] [41:15,17,21,
22,24] [42:12,13,16,18,22]
[43:5,9,11,14,19] [44:20]
[45:8,11,17] [46:13,16,17,21]
[47:23,24] [48:6] [49:19]
[50:3,5,7,15] [51:8] [72:4]
[74:10,16] [87:2,22] [89:9]
[92:25] [102:20] [109:2,8,10,
11] [117:3] [142:8,11,20]
[143:2,7] [144:3,12,16,18,24]
[146:11] [149:16,17] [152:
13] [159:7] [160:5,16]
[173:11,17,23] [174:6,18]
[175:6] [176:3] [183:11,24]
[192:17] [194:2]
castanares [2:] [3:19] [4:6]
[19:14] [20:4,15,21] [21:3]
[22:3,18] [51:14,16,22]
[52:11] [55:10,23] [56:16]
[83:14,21,22] [100:13]
[114:13] [121:16,18] [122:
8,12,15,20] [123:6,8] [128:
22] [129:2,23] [134:15]
[135:25] [136:5,9] [137:7,12]
[142:23] [152:10] [162:6,9]
[168:17,21] [169:3] [180:18]
[188:22] [189:14] [203:3,7,
10] [207:11] [208:]
category [81:7]
causation [99:13] [100:4,9,11,
12,14,19] [101:3] [102:4]
cause [99:14]
caused [113:23]
caution [23:6]
ccc [198:7,8,9] [200:22]
center [58:7]
cents [84:4] [126:17] [133:19,
22] [134:2] [138:3,4,6]
[165:6,11,15,18]
certain [9:19] [12:22] [13:24]
[15:7,15,16] [21:16] [23:14]
[29:7] [39:9,11] [42:14,23]
[45:24] [50:10] [58:22]
[71:22] [74:8] [78:15,17]
[79:2,9,18] [80:10,19]
[82:22] [92:20,24] [95:18]
[117:8] [120:16] [134:3]
[147:17] [154:25] [171:5,9]
[174:21] [187:5] [199:13]
[202:2] [203:22]
certainly [4:21] [8:11] [9:14]
[35:22] [50:23] [56:5]
[75:4] [79:16] [82:14]
[93:23] [101:4] [117:16]
[146:3] [147:18] [160:14]
[191:24] [205:12]
certify [210:5] [211:7]
cetera [50:13] [152:23]
[171:12] [181:9]
challenge [76:9]
change [45:17,21] [48:17]
[50:18] [59:4] [96:20]
[98:24] [99:5] [131:24]
[134:5,12] [135:10]
changed [54:16] [89:16]
[95:17] [144:21] [206:24]
changes [99:7,9,10,11]
[107:5] [108:8,9] [112:12]
[134:9] [139:21] [171:11]
chanin [75:12,16,17,19,21]
c-h-a-n-i-n [75:12]
chapter [84:22] [86:10]
characterization [110:25]
[139:15] [179:10]
characterize [32:6] [35:7]
characterized [187:21]
characterizes [184:22]
characterizing [34:11]
[184:11] [185:25]
chart [165:9]
checking [21:7,12]

27/03/2008 PFEFFER, ALLEN M.

chose [60:22] [71:20] [79:8] [80:2] [183:15]
chosen [80:3] [108:6]
circumstance [86:3]
circumstances [91:20,22] [139:22] [153:17] [154:7]
cited [192:7]
claim [14:3] [44:4] [162:18]
claimed [141:19]
claiming [177:7]
claims [164:25] [165:7]
clarified [186:13]
clarify [66:22] [95:4,6] [98:21] [115:18] [187:5]
clarifying [187:7]
class [26:3]
classes [25:23] [100:22,24]
clayton [8:12] [163:19]
clear [18:3,7,12] [19:24] [20:22] [30:5] [52:12] [55:10] [68:5] [75:3,4] [137:22] [151:12,14] [165:18] [182:12,18] [186:12]
clearer [147:5]
clearly [12:6] [182:25] [183:19,22]
client [11:14] [148:19] [201:10] [207:5]
clients [100:7]
close [90:8] [161:10]
closed [158:19]
closer [23:2] [54:6]
cloth [14:16]
colette [3:24] [211:5,23]
colleagues [79:18]
collection [50:19]
columbia [100:23]
combination [94:17] [98:2] [191:12]
combined [95:23] [131:3]
comfort [133:9,12]
comfortable [34:10] [121:24] [123:18,24] [125:7] [156:23]
coming [38:23]
commencement [211:11]
comments [181:5,7,11,15,16,17,18,21,25] [182:4,5,9]
common [6:12]
companies [15:22,24] [16:7] [19:4] [28:14,19,21] [44:9] [93:17] [99:23] [157:23,25] [175:14] [197:21] [199:24]
company [4:13,14,23] [10:15,25] [12:9] [13:2,3,7,18] [14:8,12] [15:7] [16:9,11,14] [17:4,9] [22:4] [24:22] [25:16] [27:14,20] [28:9,13,15] [29:3,6,10] [30:12,16,19] [31:4,5,7] [32:21] [33:17,24,25] [34:2,24] [35:5,24] [36:9,10,20] [37:17] [39:9,10] [40:25] [42:2,23] [43:21] [44:10] [45:17,18,22] [46:10] [47:6] [48:20,21] [49:2,4,18] [50:9,22,24,25] [58:10] [68:16,21,22] [69:13,15,22] [70:2,18,22] [71:3,5,22] [72:3,8,12] [73:3,7,10] [74:2,17,21] [75:5] [82:18] [85:18,23] [88:6,11,17,19,24] [89:16] [92:16,17,21] [93:10] [94:25] [95:17] [101:15] [102:15,16] [103:17] [106:20] [114:19] [134:6] [135:17] [143:6] [144:8,16] [147:14,15,16] [152:16] [153:6,7] [155:4] [156:5] [157:2,8] [158:17,18] [160:15,24] [161:16,18] [167:19] [171:5,12] [173:4,7,21] [175:21] [178:18,22] [179:20] [180:4] [196:17]
companys [11:3] [15:15] [16:16] [27:23] [30:25] [32:3,12] [39:24] [41:14,16,24] [44:7] [45:17,20] [46:4] [47:9] [50:2] [62:20,21] [92:20] [137:25] [156:23] [159:15] [160:5] [171:19] [175:13,16,22] [179:4]
comparable [15:22] [16:7,10,14] [17:4,7,9] [19:4] [22:4] [28:9,12,15] [29:10] [31:4] [43:21] [175:14]
comparables [14:3] [93:9]
compare [27:22] [31:6] [52:15] [85:14,15] [86:6] [89:5] [90:15,17] [92:9] [98:16] [105:2] [106:10] [107:4,9,12,13] [108:7,15,18,20] [109:14] [119:13] [129:4] [130:23] [139:18] [172:16]
compared [84:20] [87:21] [94:13,16] [96:7] [103:14,23] [105:7] [106:24] [112:21] [117:2]
compares [12:18] [53:5] [66:12] [105:19] [108:3] [175:22]
comparing [11:2] [52:25] [53:18] [86:9,22,25] [94:10,11,14,18] [95:10,11] [101:15] [102:23] [107:23] [116:25] [141:9,10,11,14] [173:3]
comparison [51:24] [85:8] [86:4] [91:6,7,17] [92:3] [94:8] [95:9,14] [102:14] [105:17] [118:10] [119:20] [120:4] [167:6]
competitors [47:15]
complete [74:5] [91:2] [92:11] [93:24] [141:12] [210:]
completed [114:22,23]
component [33:14] [63:13]
components [45:24] [58:11]
comports [199:5]
comprise [57:21]
compulsion [10:6]
concept [4:17] [47:6] [66:9,15,18,25] [67:6,8,9,13,14,20,23] [68:2,7,12,19] [69:9] [70:9,13,15,25] [71:5] [72:7,9,10,16,20,22] [73:11,14,23] [74:5,18,25] [75:3,13] [93:11] [144:19] [147:15] [156:15] [158:9,12,15]
concerned [7:19]
concerns [157:24] [158:3] [173:12,13]
conclude [17:6,13] [42:21] [63:14] [70:22] [81:5,10,11] [158:18,22] [184:14] [191:22] [202:10,11] [203:16,18] [207:9]
concluded [6:21] [138:18,22] [177:2,3]
concludes [42:4] [88:14,18] [197:7]
concluding [167:8]
conclusion [42:20] [49:5,9] [53:7,24] [68:14] [93:21] [104:22] [110:19] [141:15] [147:25] [150:22,25] [151:11] [166:21] [183:22] [190:25] [191:25] [194:23] [195:2] [204:12,16] [206:10,14,20]
conclusions [43:4] [53:6] [76:16] [111:10] [132:20] [140:5] [148:4] [180:14] [192:21] [202:17]
concurred [162:25] [163:3]
conduct [97:23]
conducted [59:4] [80:10] [89:4] [110:4]
conducting [49:20] [50:14] [75:6] [118:20]
conducts [69:19]
confidence [162:23]
confident [156:14]
confirmed [61:2]
conflict [70:23]
conforms [130:17]
confused [187:20]
connection [52:24] [77:2] [79:14,17] [80:17,20] [140:17] [154:13,19]
consider [16:8] [35:23] [47:4,8,10] [49:18,19,20,22] [50:11,14,17,18,19] [67:20,23,25] [71:4,7,9,12] [80:17] [81:15] [93:6] [94:2] [99:4] [104:9] [112:3,7,12,13,14,17,18,20,24] [113:15,25] [117:11,15,21] [152:19] [176:6] [205:16]
consideration [31:16] [51:4] [80:15,22] [97:22] [163:15]
considerations [45:19] [159:11]
considered [44:14,24] [50:23] [71:11] [81:14] [94:2] [99:19] [117:7,9,16,17,22,25] [141:20] [146:14] [163:25] [167:6] [174:16] [176:8]
considering [33:11,13] [50:2] [73:7] [93:10] [106:20] [107:5] [111:20] [120:2] [143:5]
considers [28:14] [169:6] [175:11]
consist [26:24] [41:22]
consisted [24:22]
consistent [30:21] [31:13] [69:12,19] [74:5] [161:3] [165:8] [192:5] [197:24] [199:4] [200:3]
consists [16:15] [24:12] [37:23] [91:13,15] [180:21] [195:20] [197:11]
construct [105:25]
consult [23:15]
consulting [19:6,9,13] [20:9,11] [23:9] [52:6] [55:8]
contain [125:2] [149:19]
contained [83:6] [84:15] [192:3,10] [194:4] [197:4]
containing [149:19]
contains [181:24]
contemporaneous [14:6] [44:5] [47:13] [93:3] [116:12] [118:19] [197:24] [199:19] [200:3]
contemporaneously [182:24] [183:2]
contend [16:21,25] [17:2] [118:9] [163:11]
contending [116:23]
contends [64:23] [86:2]
content [57:5]
contention [67:3] [86:3] [95:16] [105:9] [156:21] [162:3]
contest [201:11]
context [4:24] [10:12,21,23] [11:17] [41:14,16] [99:4] [112:10] [113:2] [157:19] [158:21] [159:6] [160:12]
contingent [14:3] [44:4] [90:13] [127:3]
continue [31:9] [67:17] [72:16] [156:15] [196:14]
continued [41:25] [68:16,22] [95:2] [137:12] [157:6,8] [158:8,25] [165:14]
continuing [75:7] [115:21] [161:19]
contracts [159:23]
contrast [110:14]
contrasted [137:14]
control [44:13,18]
controversy [211:16]
convenient [51:14]
conversation [57:7,9,10,19]
conveyance [12:2]
copied [122:21]
copies [124:24]
copy [56:16,19] [82:6]

27/03/2008 PFEFFER, ALLEN M.

[122:9,10] [162:11]
corner [58:3] [59:8]
corporate [8:25]
corporation [3:13]
correct [5:8,13] [7:3,9,22]
 [8:16,17] [9:8] [11:21]
 [15:9,10,12,13] [17:18]
 [20:3] [25:13] [26:6,10,11,16]
 [27:10,23,25] [28:16,17,19]
 [20,24] [29:11,23] [30:11,14]
 [32:14,16] [33:16] [36:12]
 [37:13,14,25] [38:8,20]
 [39:17] [41:7,8,19,20,23]
 [42:6] [48:3] [62:22,24]
 [64:21] [66:19] [67:10]
 [68:8,11] [70:21] [76:13,14]
 [82:20] [84:6,7] [85:20]
 [98:12] [101:13,17] [102:17]
 [20,21] [103:2,4] [104:11]
 [105:8] [112:7] [119:11,16]
 [22] [121:4] [127:8,10,24]
 [130:20,21] [131:5,20]
 [135:12,15,19] [137:25]
 [138:10] [139:5,6,12]
 [141:2] [145:2,3] [146:15,16]
 [150:23] [158:9,10,13]
 [159:16] [160:9] [164:25]
 [166:21] [167:8] [168:10]
 [171:18] [174:8,12,25]
 [179:23] [188:8] [189:18]
 [190:23] [197:14] [199:13]
 [206:10] [210:8]
corrected [120:25] [190:3]
 [191:22] [196:12] [203:21]
correcting [188:25] [189:25]
 [193:13]
correction [84:14] [196:9]
corrections [188:7]
correctly [28:11] [32:19]
 [75:14] [84:25] [85:4]
 [95:20] [173:14] [198:2]
corroborate [148:3]
cost [41:3,5] [174:24] [175:
 4,9,10,11,19]
costs [40:24] [72:11] [96:2]
 [98:3] [159:9] [172:20,22]
 [173:2,6,8] [175:16]
couldnt [120:11]
counsel [3:17] [82:5] [83:25]
 [124:25] [211:17]
county [210:4] [211:]
couple [19:15] [56:20]
 [136:10]
course [15:6] [29:3] [30:4]
 [44:20] [57:3,7] [60:21]
 [85:25] [93:6] [95:17]
 [144:21] [155:6] [157:10,11]
 [161:19]
court [3:15,23] [11:14]
 [76:9] [188:12]
courts [12:22]
create [51:6]
created [148:19] [170:19]
creation [170:9]
credit [2:9] [3:14,22] [14:25]
 [99:16] [124:25] [127:3]
 [129:19] [130:16] [133:15]
 [148:19] [171:9] [172:11]
 [177:8,9,25] [178:9] [197:25]
 [198:4,11,13,15,16,19,20,22]
 [199:5,6,11,15,17,18]
 [200:4,21] [207:3]
creditors [94:15] [95:12]
 [96:8,10,24] [97:10,12,18]
 [110:14,15] [164:24] [165:
 22] [166:3,4,8,12] [167:11,19]
 [25] [168:9] [179:5,15]
critical [84:18] [144:23]
criticism [53:14] [84:24]
 [169:5] [172:16,25]
criticisms [101:11]
criticize [119:19] [146:13,17]
 [177:6,15,18] [185:23]
 [201:12] [205:15]
criticized [119:9,25] [194:12]
critique [103:5] [117:6]
 [150:18,19,21]
critiques [148:5]
csfb [121:10] [122:16]
 [123:19] [125:13] [138:18]
 [148:23] [149:4,5,7,10,11,14]
 [18,20] [162:9] [180:18]
 [208:10,,]
curiosity [188:18]
cushion [183:4]
cut [74:8] [156:13]

D
daily [51:2]
damage [85:22] [98:23,25]
 [99:12,14,15,17] [157:7]
 [158:24] [164:8]
damaged [94:25]
damages [67:3] [84:19]
 [95:19] [99:3,18,24] [100:4]
 [6,9,19] [101:3,8,14] [102:3]
 [4,5] [103:24,25] [107:24]
 [111:25] [112:13] [120:3]
 [205:24]
data [14:19] [17:8] [22:8]
 [24:23] [25:4,6,7,8] [26:19]
 [27:4] [28:18,24] [29:5,8]
 [31:22,23] [32:11] [33:7]
 [43:23] [59:21] [60:8,10]
 [62:15,17,22] [63:14]
 [64:13,14,16,19,20] [65:5,8]
 [9,11] [89:25] [90:2,14,16]
 [91:6,14] [93:6] [109:16,22]
 [115:8,9,22,24] [116:2,6,10]
 [17,24] [117:7,25] [118:11,12]
 [21] [119:10,20] [120:2,5]
 [121:24] [124:9,10,15]
 [125:3,5,17,20] [126:13]
 [127:6,23] [130:24] [132:21]
 [133:10] [135:18] [140:6,18]
 [141:11,13] [142:6,10,19]
 [143:8] [144:4] [206:18]
datas [111:6] [120:14]
date [6:11] [13:7,18,24]
 [14:13] [15:7,16,17] [22:22]
 [26:20,25] [36:8,9,11,18]
 [37:10,11,16,23] [38:7,14,19]
 [42:22] [51:7] [52:16,17,25]
 [53:2] [61:6] [62:20,21]
 [72:24] [86:5,12] [91:14,15]
 [92:15] [93:11] [95:24]
 [106:22] [109:24] [112:15,18]
 [113:22,25] [118:15]
 [124:2] [126:2] [138:9]
 [141:12,18] [149:12] [159:
 12] [160:18] [163:16] [173:
 7] [187:9] [191:5] [199:12]
 [206:15]
dated [148:22] [149:3]
 [180:23] [181:3]
dates [7:8] [8:5] [53:5,10]
 [57:16] [59:22] [65:15]
 [70:14,16] [90:25] [91:13,23]
 [99:23] [113:15,16,18]
 [114:21] [116:19] [117:2]
 [118:22,24] [119:5] [129:5]
 [139:20] [173:4] [189:5]
 [190:4] [206:2]
daubert [76:3,4]
d-a-u-b-e-r-t [76:4]
davidson [78:8,10]
day [29:4] [56:17] [96:22]
 [210:6,14] [211:9,19]
days [56:20] [162:15]
dcf [141:7] [150:25] [164:3]
 [186:22] [189:20] [206:19]
dcfbased [164:3]
dcf-based [164:3]
deal [179:12]
deals [74:3,8]
debt [6:4] [7:3,5,13,14,17,22]
 [8:9] [12:25] [16:17] [27:8,18]
 [22,23] [30:23] [31:5,6,8,16]
 [17] [32:2,3,22,25] [33:9,11]
 [14,18,19,21,22] [34:3,8]
 [40:23] [60:10] [89:24]
 [91:3] [93:4,7] [126:22,25]
 [127:7,14] [158:2] [175:9,10]
 [11,12,13,16] [178:23]
 [183:6] [190:4,7] [191:2]
debtfree [40:23]
debt-free [40:23]
debts [12:11,12] [50:11]
 [137:25] [179:22] [189:3]
decade [143:18]
decide [45:23] [66:5] [78:20]
decided [179:19]
decision [96:20] [97:2]
 [99:8,13] [163:5]
decisions [74:15] [97:20]
 [112:13] [147:21]
decline [156:19]
deductible [175:18]
deem [19:23] [113:7,9]
deemed [116:19]
default [196:16,24] [197:3,8]
 [12,20,22] [199:4,23,25]
 [200:12,19]
defendants [2:] [3:22]
 [176:19]
define [110:9] [118:24]
 [119:5] [151:25] [152:22]
defined [11:4] [12:6] [153:2]
defines [112:16]
defining [152:2]
definition [10:5,8] [11:19,24]
 [12:5,8,12,14,20,23] [38:25]
 [39:3] [154:3] [179:20]
definitions [12:23] [154:8]
degree [100:25]
delaware [3:16]
deleted [181:8]
delve [20:13]
demand [189:15]
denominator [164:21,24]
 [165:4]
depend [32:3] [104:14]
 [111:21] [113:2]
depending [4:24] [10:12]
 [33:22] [67:22] [113:25]
 [145:18] [153:17]
depends [12:4,5] [25:22]
 [31:12] [104:13] [107:19]
 [154:7] [160:18]
deposed [183:18] [184:25]
deposition [3:12] [70:6]
 [71:13] [72:21] [78:14,17]
 [83:19] [117:13] [137:5]
 [146:4] [150:9] [157:2,9]
 [159:2] [186:12] [207:15]
 [210:] [211:8]
depositions [78:11,15,21,25]
 [79:8,22] [80:9] [154:23]
 [187:6]
derivation [174:23]
derive [41:7] [108:22] [109:
 20] [111:12] [193:2]
derived [21:18] [62:19]
 [64:20] [98:15] [107:11,13]
 [110:7] [176:2] [183:5]
derives [30:9,15]
deriving [175:7]
describe [13:20] [15:18,20]
 [23:3] [28:11] [45:9] [54:19]
 [57:11] [111:3] [134:12]
 [178:21]
described [24:10] [32:19]
 [46:18] [47:7,25] [50:13]
 [96:23] [115:9] [127:12,15]
 [17] [184:25] [187:18]
 [192:14]
designate [19:16,20]
designed [24:3] [53:15]
despite [146:14] [185:25]
detail [185:2] [191:9]
determinants [7:24]
determination [8:11] [36:5]
 [39:15] [145:7]
determinations [9:6] [71:23]
 [25]
determine [5:14,25] [8:4]
 [26:2] [38:12,13,18] [39:7]
 [40:3] [43:14,16] [44:14]
 [91:2] [92:7] [144:7] [153:25]
 [154:10] [176:17]
determined [176:10]
determining [9:10] [13:17]
 [27:20] [33:14] [37:23]

27/03/2008 PFEFFER, ALLEN M.

[38:6] [40:20] [45:4] [60:5]
 [178:25]
developed [170:20]
didn't [8:2] [47:24] [53:23]
 [56:18] [63:15,18] [67:8]
 [68:10] [74:9] [77:23]
 [78:3,7,24] [79:2] [82:7,9]
 [89:19] [92:2] [94:2] [96:17]
 [97:14] [103:12] [117:8,10]
 ,15,16,20,22] [144:12]
 [145:14] [148:7] [149:20,23]
 [155:10] [163:2] [166:15]
 [176:7] [177:19] [187:24]
 [193:2,5,7] [201:7] [205:13]
differ [25:21] [62:25] [63:6,7]
 ,10,15,20] [64:6] [66:24]
 [67:4] [76:15] [121:22,25]
 [124:9] [180:12,14]
differed [64:12]
difference [30:18] [38:15]
 [55:7] [87:17,18,21] [89:6,10]
 [97:10] [113:10] [139:25]
 [172:10] [197:11]
differences [29:8] [45:7]
 [64:13] [90:24] [91:22]
 [159:13]
different [4:18,19] [12:23]
 [25:22] [31:18] [33:3]
 [34:4] [35:20] [46:9,11]
 [47:8] [53:5] [57:15] [73:14]
 [75:8] [85:25] [86:24]
 [87:6,10,11] [92:14] [93:20]
 [94:17] [97:2,20,23] [99:23]
 [103:18] [109:21] [118:4]
 [122:25] [128:6] [134:7,20]
 [147:21] [148:14] [159:7,8]
 [161:17] [178:25] [190:24]
 [201:5]
differential [91:12] [137:14]
 [139:7]
differently [29:25] [40:6,8,9]
difficult [120:8]
dime [84:11]
diminished [131:4]
diminution [131:22,23]
 [139:12,15]
direction [92:14] [161:17]
 [208:18]
directly [211:15]
disclaimer [149:20]
disclosing [19:12]
disclosure [19:8] [113:20]
 [114:4,18,20]
disclosures [114:24]
discontinued [156:5] [171:
 5]
discount [21:18] [41:7,9,17]
 [44:11] [45:4] [104:11,19,20]
 ,23] [169:18,20] [173:22,23]
 [174:3,12,17,19,21,23]
 [175:5,8,25] [176:9,11,13,17]
 ,22] [189:4] [192:5,10,19,22]
 ,25] [193:3,6,8,10,11,12,14]
 ,17,21] [197:23] [200:2,14,16]
 ,25] [201:4]
discounted [14:3] [15:9]
 [16:13] [17:11] [18:19,21]
 [19:4] [21:5,9,13,15,22]
 [34:13] [35:4,9,12] [36:2,20]
 [37:22] [38:5] [41:22]
 [43:14,19] [44:20] [45:8]
 [46:13] [47:23] [48:6]
 [51:8] [87:2] [89:8] [102:20]
 [109:2,8,10,11] [117:3]
 [142:8,11,20] [143:2,7]
 [144:3,12,18,24] [146:11]
 [149:17] [152:13] [173:11,17]
 [175:6] [176:3] [183:11]
 [194:2]
discoverable [20:24]
discovery [23:13] [54:23]
discrepancy [84:2]
discuss [170:13]
discussed [98:23] [111:9]
 [154:20,23]
discussion [52:5] [60:17]
 [61:3]
discussions [61:2]
disfavored [159:16]
disposal [75:22]
dispute [175:25] [177:9]
 [205:20] [206:6]
distinction [20:5,7]
distinctions [4:19]
distinguished [70:3] [79:10]
 [80:4] [117:10] [176:12,19]
 [202:12]
distinguishing [166:2,5]
distress [44:8] [45:20]
 [47:9] [48:9,14,23] [49:2,3]
 ,10,12,13,17] [50:22,24]
 [74:2,22] [147:17] [173:13]
 ,20,22,23,24] [174:2]
distressed [48:21] [73:21]
distribute [164:23]
distributed [179:5]
district [3:16]
divide [164:22]
dividend [94:15] [95:11]
 [96:8,9] [97:10,18] [110:14]
 ,15] [165:21] [167:10]
dividends [164:16]
document [56:14] [66:8]
 [81:7] [85:2] [115:17]
 [117:12] [122:7,16] [123:13]
 ,14,17,19] [124:22] [125:13]
 ,19] [129:14,19] [134:25]
 [135:2,14] [148:19,22,23]
 [149:3,4,5,15,18,23] [152:
 11] [160:3] [162:16] [163:8]
 [180:22,24] [181:2,13]
 [182:8,14] [183:13] [187:22]
 [189:9,23] [195:25] [196:8]
 [208:10,13,]
documents [23:13] [54:22]
 [65:24] [66:4] [76:2] [80:8,15]
 ,19] [81:8,14] [121:10]
 [123:25] [124:24] [134:19]
 [159:21] [171:9] [177:22,23]
 [189:15] [196:20] [209:3]
doesn't [38:10] [39:21]
 [88:19] [98:11] [105:22]
 [107:24] [154:4] [162:2]
doing [17:8] [31:23] [33:7]
 [35:11] [44:20] [52:12]
 [93:12] [95:5] [97:25]
 [104:3] [126:12] [139:20]
 [140:18] [150:13] [173:17]
 [200:9]
dollar [39:20,22] [126:17]
 [165:16]
dollars [26:12] [32:22]
 [88:8,20] [124:4,5,6] [178:
 2] [192:11,24] [207:4]
done [8:15] [11:16,17,18]
 [16:25] [21:6,10] [48:8]
 [52:8] [68:24] [75:13]
 [86:8,15] [92:4] [94:24]
 [95:8,9] [97:5] [99:21]
 [102:23] [103:20,21] [104:
 5] [105:18] [106:16] [109:8]
 [118:14,17] [119:17] [135:
 21] [136:10,11] [140:8]
 [142:3,25] [143:4] [144:14]
 ,18] [148:3] [151:6] [154:12]
 [168:9] [182:5]
done [14:15] [17:14] [21:21]
 [22:22] [34:10] [35:7]
 [36:14] [37:7] [42:17]
 [44:23] [48:4] [51:10,11]
 [54:12] [56:17] [57:8,18]
 [63:9,12,17,18,19,24]
 [64:11] [65:21] [69:4]
 [70:4] [71:10] [77:15,18,22]
 [78:5,9] [87:11] [88:16]
 [89:11] [100:20] [101:22,23]
 ,25] [103:9] [105:5] [110:9,10]
 ,12] [111:9,10] [114:18,19,22]
 [118:13,15] [119:5] [121:7]
 ,18,25] [122:13] [123:2]
 [125:3] [129:25] [130:2,4,7]
 [138:23] [139:14] [140:24]
 [143:15] [145:16,19,20,23]
 [146:10] [147:5] [148:9,16]
 [149:14] [150:3] [152:12]
 [153:7] [154:9] [157:21]
 [158:17] [161:22] [162:11]
 [165:3,4] [166:10] [167:15]
 ,17] [168:7,12] [171:22,23,24]
 [172:14] [174:14] [176:15,24]
 ,25] [177:2,3,14,16,21,23,24]
 [180:12] [181:10,14,16]
 [183:14] [184:6,7,9] [186:19]
 [187:7,23,24,25] [188:3]
 [189:10] [190:17] [191:24]
 [193:16] [195:3,18] [197:16]
 [201:6,24]
doors [156:5] [157:3] [158:19]
double [104:18]
doublecount [104:18]
double-count [104:18]
doubt [64:15,18,24] [87:11]
down [5:6] [60:16,22] [66:10]
 [75:11] [164:9] [165:13]
 [169:14,19,25]
downside [46:8]
dr [5:10,18,22] [6:6,21]
 [7:25] [8:6] [9:16,19] [13:12]
 [16:22] [19:5,25] [20:18]
 [21:8,12] [52:18] [53:3,4,14]
 [54:25] [63:21] [64:7,12,16]
 ,18,23,25] [66:11,17,24]
 [68:13] [69:8,21] [71:7]
 [76:13,18] [79:17,25]
 [80:14,18] [81:16] [84:18]
 [85:7,18] [86:2,25] [87:22]
 [88:9,10,14] [89:8,11]
 [94:23] [95:8,16] [97:7]
 [98:14,22] [99:20] [101:11]
 ,14] [102:13] [104:4] [105:6]
 ,18] [109:23] [111:8] [116:24]
 [117:22,25] [118:6,9]
 [119:9] [121:9,11] [123:23]
 [128:6,9] [137:18] [141:6,15]
 [142:12,14] [144:20,23]
 [145:22] [146:4,13,17]
 [147:4,19,20] [148:18]
 [149:3] [150:4,8,21] [156:4]
 ,25] [158:16] [161:14,22]
 [163:12] [164:2] [166:13,16]
 ,20] [167:6,24] [169:6]
 [172:16] [173:2,10] [176:2]
 ,11] [177:7] [180:9] [183:10]
 ,22] [185:24] [186:21]
 [189:20] [191:17,21] [192:
 7,9] [194:13] [196:2,10]
 [197:7,13] [200:17] [201:11]
 ,12] [202:3,11,17] [203:20]
 [204:4,21] [205:15,20]
 [206:6,17]
draft [176:16] [181:3,12,24]
 [184:12,20] [185:10] [186:
 6] [187:24] [188:11,15]
 [202:6,16]
drafted [82:23] [204:11]
drafts [83:2] [162:17,21]
dramatic [148:5]
dramatically [144:21]
drastically [85:25] [147:21]
draw [122:23]
driven [169:13]
drop [156:16]
dropped [133:21] [135:11,18]
 ,21] [156:17]
due [10:17] [17:24] [173:23]
 ,24]
duff [19:6] [20:8] [23:9]
 [75:18]
duly [4:3] [137:9] [211:10]
during [41:25] [158:8]
 [161:4] [170:20] [177:11]
 [178:3] [210:7]
 E
earlier [47:7] [82:25] [86:11]
 [96:9] [97:9] [116:2] [128:3]
 [151:13] [152:21] [162:17]
 [173:7]
early [104:6,7] [202:8]
earnings [16:4] [93:14]
easily [126:20] [141:5]
ebitda [16:3] [30:11] [31:15]
 [93:14]

27/03/2008 PFEFFER, ALLEN M.

effect [84:6] [132:18] [145:21] [149:20] [191:14]
efficiency [133:8]
efficient [132:6,10,15,19] [133:5,6]
effort [80:23] [202:9]
eighth [66:10]
either [29:20] [30:10] [77:4] [81:10] [107:21] [108:18] [112:8] [117:15] [147:7] [153:18] [154:25] [173:21]
elapsed [107:16] [108:9]
else [8:14] [23:3] [36:25] [37:3,4] [74:14] [100:12] [112:2] [169:17]
elsewhere [61:12]
email [125:5,9,10,14,15] [145:25] [163:2] [180:21] [181:20] [208:]
e-mail [125:5,9,10,14,15] [145:25] [163:2] [180:21] [181:20] [208:]
emails [125:15]
e-mails [125:15]
embodied [171:9]
emerge [72:9]
emerged [158:2]
emerging [97:24] [171:4]
emphasis [74:16]
employ [211:17]
end [83:16] [96:22] [128:22] [136:16] [163:16] [165:14] [167:9] [200:17] [207:15]
ended [96:21]
ends [195:11,12]
engaged [28:21] [54:3,15]
engagement [56:4]
engelman [2:] [3:5]
enjoy [159:24]
enough [108:13] [110:11] [123:24] [149:24] [182:19]
enterprise [27:14] [30:17,19] [32:14,18,21] [33:14] [34:6] [127:16,21] [189:2,19] [190:2,12] [191:5,15,17] [192:11,23]
entire [18:6] [79:22] [95:21] [98:5]
entirely [144:22] [151:12]
equal [62:2]
equation [95:22] [165:5]
equity [6:3,9,12,13,17,18,20,22] [8:9] [14:10,15] [25:15,23] [26:2] [27:22] [33:12] [63:13] [93:5,8] [121:12,21] [124:9,11] [127:13] [133:25] [138:9] [139:18,19] [141:18] [175:11,19] [178:23] [179:12] [192:3,23]
error [63:18,19]
errors [21:15] [190:23] [191:10,11,12,22] [193:13]
esq [2:]
essentially [41:23] [171:12] [195:13,15]
established [138:8]

estate [96:25]
et [3:13,15] [50:13] [152:23] [171:12] [181:9]
evaluate [31:24,25] [41:10] [71:15] [143:24]
evaluating [15:6] [34:22]
evaluation [127:7] [146:12]
evaluations [8:16] [9:6,10] [102:19]
even [63:4] [128:4] [149:24] [180:3,13] [183:23] [193:11] [205:12]
event [160:9] [163:5]
events [112:17,19]
eventual [167:7] [204:21]
ever [10:14] [13:6] [17:11] [18:8,19,23] [19:3] [20:23] [21:17] [47:23] [48:4] [51:5,6] [52:20] [55:3,11,16] [70:17] [80:21] [86:8] [100:9,18,21] [101:2] [145:9,20] [154:13] [187:10,11]
every [11:12] [12:7] [29:4]
everybody [18:16] [93:24]
everybodys [106:17]
everything [83:5,24] [84:15] [169:17]
evidence [64:25] [65:2]
exact [22:22] [61:6] [63:5] [103:11] [111:11] [126:8] [139:24]
exactly [43:7] [58:19] [84:10] [108:7] [145:16,23] [147:6] [153:25] [186:10] [192:15]
examination [4:5] [137:11]
examined [4:4] [48:10,15] [137:10] [208:4]
example [16:3] [30:22] [71:21] [74:13] [95:25] [155:22] [158:4,6] [159:20]
exceed [10:18] [190:3]
exceeded [189:3] [190:12]
exceeding [190:25]
exceeds [191:16]
exception [84:13]
excess [189:19]
exchange [10:2] [84:9,10]
exclude [80:10] [81:14]
excluded [80:22]
excluding [81:7]
excuse [129:18]
execution [154:22]
exercise [4:12] [7:11] [37:8] [195:20]
exhibit [3:2] [56:15] [57:21] [66:8] [75:11] [80:16] [81:19] [82:22] [83:6,24] [84:15] [122:16] [125:4,12] [129:10,15] [133:15] [134:16] [135:5] [137:20,23] [162:17] [163:2] [165:10] [180:18] [181:23] [201:9] [204:2,20] [207:2]
exhibited [165:10]
exhibits [208:6]

exist [29:9] [31:9] [42:17] [105:22]
existence [132:19]
existing [31:8]
exit [45:23,24] [58:11,21,25]
expand [202:16]
expect [44:11,12] [48:8] [114:24] [115:4] [156:8,15]
expectations [45:16] [72:3] [150:16]
expected [36:4,17,22] [37:9,18,24] [38:13,16,19] [39:8,16,24] [40:16,20] [41:14,17,24] [42:13,18,19,22] [44:18] [45:11,13] [46:21] [47:11] [105:10] [144:16,17] [149:16] [156:10] [164:8] [174:6] [175:20] [196:16] [197:19] [199:22]
expenditure [46:6]
experience [36:10,15]
expert [5:2] [8:18,22] [17:16,24] [20:19] [24:11] [36:7] [48:20] [54:24] [61:24] [76:10,18] [100:8,9,18] [111:14] [116:9] [133:9] [157:18] [177:19] [180:3] [191:4]
experts [13:17] [101:12]
explain [133:13,21] [162:4] [180:3] [190:18]
explained [37:8] [164:2]
explanation [191:9]
explicitly [42:13] [81:13]
explore [203:20]
explored [202:6]
expose [203:23]
exposed [10:9]
exposure [92:20,23]
express [150:24] [152:4,15] [153:5]
expressed [42:2] [145:9]
expressing [151:14,18,20]
expression [24:3,6]
extent [9:19] [13:4] [18:14] [19:11] [20:12,16] [47:22] [49:4] [112:23] [113:12,19] [147:17] [161:15] [163:23] [164:4] [171:16]
extremely [144:25] [145:4,14,22] [146:5,8,15] [151:21] [152:5] [183:2,9,16,24] [184:3,11,18,23] [185:25] [186:3,8] [194:2,6,14,15,21,24]

F

fabricated [64:25]
face [7:9] [12:25] [26:9,13,18] [27:22] [34:3] [63:21] [183:6]
faces [50:25]
facets [139:22]
fact [10:25] [35:3] [43:7] [47:10] [62:11] [70:22] [79:9] [80:2] [85:23] [88:10] [93:10] [99:6,22] [105:13] [107:22] [110:5,21] [122:12] [123:19] [128:3] [133:14] [144:8,19] [146:14,25] [147:11,13,16] [154:3,24] [156:20] [157:8,17] [161:2,16] [162:15,17,22] [167:25] [171:25] [173:25] [175:17] [177:18] [180:3] [185:22] [192:2] [202:16] [207:4]
factor [140:4] [174:5]
factors [44:13] [47:9] [50:20,21] [99:4,6,14] [156:10] [173:17] [174:9] [175:7]
failed [71:7,12]
falling [173:2]
failure [172:16]
fair [4:17,21,23] [5:4] [9:17,21] [10:17] [11:3,17] [12:10,24] [34:5,21] [35:3] [63:14] [81:4,10,11] [88:14] [107:9] [108:13] [113:6] [124:8] [133:8] [142:6] [143:11,25] [152:15,19,22] [153:2,6,12,13,22] [154:3,10] [167:8] [174:3] [179:21] [183:7]
fairly [90:8]
fall [165:13]
fallen [133:19] [135:4]
familiar [12:13] [76:5]
far [7:19] [63:17] [115:9] [141:3,20] [189:19] [195:10]
fashion [49:21]
faulted [68:19]
favor [52:12] [176:19]
favorable [160:8]
favorred [159:14]
february [17:19]
feel [19:22]
feeling [173:20]
feels [30:8] [157:10]
fees [159:22] [160:2] [177:8] [178:3]
fellow [101:12]
felt [77:11] [93:3]
few [8:8] [64:10] [94:20] [107:3,6]
fiachra [77:7]
field [100:19] [101:2,5]
fifty [138:4,5]
figure [42:23] [62:19] [63:2,4,5] [94:11] [98:14] [104:25] [105:19,22] [106:23] [108:23] [109:20,21,22] [127:15] [130:9] [135:4] [137:24] [140:13,19] [141:6,17]
figures [84:3] [111:11] [130:5,19] [131:2,3] [137:16,18,19] [138:18] [139:10] [197:23] [200:2]
file [58:22] [69:15] [71:4] [92:14] [95:25] [156:6]
filed [17:17,19] [69:13] [84:22] [85:19,24] [88:6,12,17] [157:12] [159:5] [167:20]

27/03/2008 PFEFFER, ALLEN M.

[168:8]
filing [96:3] [103:22] [159:3]
final [53:24] [145:7] [162:15]
 [191:3] [205:3,13]
finance [9:2] [39:3] [49:25]
 [58:7,11,25]
financial [16:2] [23:14,15,16,
 20] [114:20] [120:16]
 [126:21] [127:23] [155:2]
 [194:4]
financials [114:23]
financing [23:19] [50:17]
 [59:5]
find [5:20] [6:16] [7:16]
 [25:8] [28:13] [30:3] [32:2]
 [36:21] [39:15] [59:21]
 [63:18] [65:12,20] [94:8]
 [109:13] [113:10] [116:16]
 [125:23] [131:3] [150:16]
 [181:21]
finding [26:24] [27:4] [63:19]
 [90:4] [155:18] [197:12]
 [205:21]
finds [35:24] [36:9] [189:20]
fine [122:8]
finger [157:11]
firm [75:22] [176:8]
first [2:9] [3:14] [41:23]
 [43:18] [54:3] [57:25]
 [58:3] [103:5] [107:21]
 [147:16] [163:16] [179:6,16]
 [189:7]
fitch [198:5,9]
fitches [14:25]
five [168:16] [182:24]
flawed [183:25]
flaws [202:5]
flow [14:3] [15:9] [16:13]
 [17:11] [18:8,19] [19:4]
 [21:6,9,13,16,22] [30:10]
 [34:14] [35:4,9,12] [36:3,20]
 [37:22] [38:5,23] [39:3,25]
 [40:16,20,23] [41:22]
 [42:18] [43:14,19] [44:20]
 [45:8] [46:13] [47:23,24]
 [48:6] [49:19] [51:8] [87:2]
 [92:25] [102:20] [109:2,8,10,
 11] [117:3] [142:8,12,20]
 [143:2,7] [144:3,18,24]
 [146:12] [149:17] [152:13]
 [160:16] [173:11,18] [175:
 7] [176:3] [183:11,24]
 [192:17] [194:2]
flowing [39:4]
flows [9:2] [18:22] [21:19]
 [36:3,4,6,10,17,22] [37:9,16,
 18,24] [38:6,13,14,19]
 [39:16] [41:15,17,21,24]
 [42:12,13,16,23] [43:5,9,11]
 [45:11] [46:16,22] [72:4]
 [87:22] [89:9] [144:12,16]
 [149:16] [159:8] [160:5]
 [173:23] [174:6,18]
focus [51:3] [97:3]
focused [54:24]
focusing [161:13]

follow [29:23] [192:15]
followed [98:15] [125:16]
following [180:22]
follows [4:4] [137:10] [182:
 22]
foregoing [211:8]
foremost [43:18]
forget [102:11]
forgot [24:20]
form [7:10] [69:2] [73:8]
 [74:22] [109:11] [175:5]
 [202:6] [205:13]
formal [205:3]
formatted [181:9]
formed [48:19] [110:19]
forms [74:6] [126:22,25]
formulation [150:19] [151:7]
forth [9:12] [93:18] [96:6]
 [109:16] [143:6] [206:16]
forward [71:24]
found [21:15] [27:12] [53:7]
 [64:13] [90:16] [99:11]
 [187:10] [190:12] [191:17,19]
foundational [204:20]
frame [160:11]
fraud [113:20] [114:4,18]
fraudulent [12:2]
free [19:22] [20:19] [32:2,25]
 [33:8] [34:7]
freely [132:16]
friends [124:5,6]
front [46:10] [76:8] [81:21]
 [128:12,14] [129:10] [133:
 15] [182:15]
full [78:15,17] [106:16]
 [114:20,23] [146:3]
fullest [171:15]
fully [24:14] [183:19]
fun [192:16]
function [164:19,20]
furnish [124:23]
furnished [76:3] [82:6]
 [124:24]
further [4:4] [41:4] [46:24]
 [123:25] [137:10] [144:6]
 [207:11]
furthermore [161:12] [194:
 3]
future [21:19] [36:3,5,17]
 [37:9,24] [38:6] [39:9,11]
 [43:5,9,11] [47:14]

G
gather [5:11] [17:8] [26:19]
 [32:11]
gathered [77:2]
gathering [24:12,13,23]
gathers [28:18]
gave [56:16,19] [101:25]
 [124:22]
general [22:17] [23:8] [25:21,
 22] [35:22] [61:6] [74:15]
 [142:15] [165:22] [166:8,11]
 [179:15,17]
generally [153:9] [154:24]

[161:3] [169:15] [179:18]
getting [45:18]
giant [43:12]
give [12:20] [22:23] [113:6]
 [125:2] [143:10] [159:20]
 [168:17] [201:5]
given [10:3,14] [68:15]
 [85:6] [94:24] [95:16]
 [97:2,20] [105:9] [144:7,19]
 [210:8]
gives [32:13] [133:9]
glatt [2:4] [3:20]
go [25:7] [29:17] [36:22]
 [39:10] [40:15,19] [47:24]
 [61:10] [83:12] [92:6,14]
 [94:7] [100:21] [128:15]
 [129:3] [153:15] [169:19,25]
 [175:7] [179:9] [190:2]
 [195:10]
goes [24:11] [28:12] [35:11]
 [99:21] [128:16]
going [21:25] [23:6] [28:9]
 [39:10] [46:19] [47:6]
 [50:24] [52:4,7,22] [57:25]
 [66:3,9,15,17,25] [67:6,8,20,
 23] [68:2,6,12,18] [69:9,15]
 [70:9,13,15,22,25] [71:5,23]
 [72:6,9,10,16,20,22] [73:11,
 14,23] [74:5,18,25] [75:3,13]
 [89:5] [93:11] [95:25]
 [97:24] [106:13] [121:14,15]
 [122:15,23] [123:9] [124:3,
 25] [125:12] [134:21,24]
 [136:12] [144:19] [147:15]
 [153:16,23] [156:15] [157:
 24] [158:3,9,12,15] [162:6]
 [188:19] [193:9]
goldblatt [61:19]
gone [28:2] [70:2] [105:25]
 [157:25] [161:17]
good [4:7,8] [57:5] [110:11]
 [118:7] [136:2] [158:4]
 [168:21] [174:14]
gotten [88:11,17,20,25]
 [167:19,25]
grade [161:11]
graduate [100:24]
greater [12:25] [89:10]
 [162:19] [172:22] [191:23]
ground [147:10]
grounds [56:13] [146:23,24]
 [147:22]
group [75:18] [92:18] [154:
 25]
guarantee [197:23] [200:2]
guarantees [74:11] [127:3]
 [183:7] [189:3] [190:7]
guess [147:22]
guesswork [87:8]
guys [156:12]

H
half [85:3,5] [136:14] [201:21]
hand [89:6] [124:18,19]
 [211:19]

handwriting [56:21] [57:5]
 [75:14]
hang [122:13]
happen [154:21]
happened [36:23] [37:6]
 [103:23] [112:3,8] [113:15,
 18]
happens [179:11]
hard [148:13] [155:17]
 [160:12,14]
hardest [136:11]
hasnt [148:3] [151:6] [161:15]
havent [76:23] [110:6]
 [134:13] [135:21] [140:8]
 [142:25] [145:12] [151:10]
 [157:15,24] [168:13] [176:
 4,15] [188:2,9] [189:13]
 [195:3,17] [201:8]
having [4:3] [20:17] [29:5]
 [30:7] [119:19] [137:9]
 [148:13] [171:5] [185:24]
 [194:13] [201:13,24] [205:
 16]
head [65:21] [70:14]
headed [144:8] [147:19]
healthier [160:24]
hear [106:14,15]
heard [158:20] [201:24]
 [202:10]
hed [108:18]
help [61:23] [66:5] [125:19]
 [194:11]
helped [61:18]
helpful [5:5]
helps [180:3] [194:17]
hereby [210:5] [211:7]
hereunto [211:18]
hes [19:12] [100:14] [107:20]
 [109:8] [119:17] [121:11,20]
 [122:4]
high [84:4] [198:20] [202:13]
 [203:17] [205:17]
higher [130:6] [159:25]
 [176:23] [197:20] [199:23]
 [202:17] [203:25] [204:12]
 [206:4] [207:6]
highlight [183:16]
highly [192:6]
hills [3:7]
hindsight [13:23] [37:12]
 [113:17] [182:23]
hired [143:10]
historical [14:13] [47:12]
 [194:19]
history [23:25]
hockey [146:18] [150:11,14]
holders [133:25] [179:13]
home [136:6]
homes [3:13] [5:3,8,10,12,15,
 21,25] [6:3,5,9,14,17]
 [163:19]
honestly [201:7] [205:11]
hope [66:4]
horizon [45:16]
hour [136:14]
hours [136:10]

27/03/2008 PFEFFER, ALLEN M.

however [8:7] [113:19]
[126:19] [184:24] [187:4]
[189:17] [193:11]
hundred [63:25] [178:2]
hundreds [8:15]
hypothetical [67:22] [84:22]
[85:10,16] [86:7,10,23]
[87:20] [88:25] [89:7,12]
[92:3,7] [93:12,22] [94:12,15]
[96:7,8] [97:9,11,19] [98:6
,25] [102:24] [105:2,7]
[106:2] [108:19,20,23]
[109:20] [110:6,13] [153:19]
[154:4,9] [166:12,18]
[167:4] [172:18,21]

I
id [12:17] [20:21] [65:22,24]
[75:25] [90:11,20] [93:2]
[104:21] [107:6] [109:13]
[111:4] [113:10] [121:24]
idea [110:6,9,12,21] [111:2
,4,5,7] [123:15] [140:25]
[166:7] [167:25] [168:7]
[172:2] [193:16]
identical [131:2]
identification [3:3] [122:22]
[125:18] [134:23] [162:14]
[180:20] [208:]
identified [155:6] [188:25]
[189:25]
identify [57:12] [155:5,9]
[180:24] [195:19]
identifying [153:16]
ignored [118:18]
ignores [161:15]
ill [22:16] [23:7,10,17] [38:4]
[55:10] [61:12] [82:4]
[95:6] [119:7] [130:8]
[162:12] [167:3]
illogical [192:21]
im [6:14] [10:21,22] [18:4]
[20:7] [25:21] [26:13]
[28:4,9] [29:13,21] [30:2,20]
[32:6] [33:13] [34:10]
[37:21] [40:11] [44:22,25]
[47:4] [53:16] [55:10]
[59:12] [61:11] [63:4,18]
[66:22] [71:24] [79:14,18]
[84:10] [91:10] [94:23]
[96:12,18] [97:16,17]
[103:5] [104:19] [105:22]
[106:8,13] [107:11] [112:17]
[114:17,25] [118:18] [120:
13,17] [121:7] [141:10,11]
[147:8] [148:13] [160:11]
[162:2] [165:23] [185:9,10
,11] [186:5,25] [187:17,23]
[188:4] [191:21] [192:14]
[193:9] [198:18] [204:25]
[205:6,9]
imagine [166:4]
imagining [203:10]
impact [191:11]
implications [148:6]

implied [200:21]
importance [79:7]
important [13:22] [14:5]
[78:23] [79:3,19] [98:20,21]
[133:4]
impression [48:25]
improved [160:5,22]
improvements [160:15,16]
improving [155:23] [161:14]
inappropriate [144:22]
[206:15]
inclination [89:20]
inclined [113:16] [199:18]
include [13:25] [65:18]
[95:25] [96:2,4] [99:6]
[107:6] [113:17] [146:25]
[173:7]
included [55:4] [61:16]
[73:8] [90:13] [126:23]
[207:2]
includes [14:8] [173:5]
including [14:7] [61:18]
inclusive [98:2,5]
income [31:17]
inconsistencies [151:7]
incorrect [68:6] [69:8]
[123:21] [206:11]
increased [51:2]
incredibly [14:5]
indecision [95:18]
indeed [186:15,17]
independent [21:9]
index [208:2]
indicated [162:19]
indicates [135:16]
indicating [56:18] [122:19]
[189:18] [205:2,9]
indication [14:23] [127:6]
indications [14:7] [109:16]
indicative [28:22] [142:6,19]
indicator [133:10]
indicators [6:5] [16:3]
[143:8] [144:4]
indirectly [211:16]
individual [12:10]
industry [15:23] [44:9]
[47:14,15] [99:10] [107:8,15]
[108:9]
infected [13:23]
influence [140:5,18]
information [5:12] [10:3]
[15:5,25] [19:9,12] [44:5]
[77:2] [79:21] [113:22,24]
[115:2,3,7] [116:13] [118:19]
[132:17] [134:8] [184:13]
[197:4] [209:3]
informed [170:9]
inherent [70:13]
initial [162:21]
initially [54:20] [202:4]
inputs [200:10] [204:16]
insolvency [12:21] [118:5]
[201:11]
insolvent [178:18] [179:4,20]
[180:4] [183:23]
instance [11:13] [85:15]

instances [11:7,8] [78:18,19
,20]
instead [65:11] [108:6]
[134:2] [163:17]
instruct [19:22] [20:13]
[21:25] [23:10] [52:22]
[56:12]
instructing [55:13]
instruction [22:7,13] [55:20]
integrated [92:22]
integration [92:24]
intend [20:24]
intended [62:16] [72:8]
[73:4] [96:14] [204:20]
[206:19]
intending [74:18] [200:9]
[203:15]
intention [72:22] [158:14]
intentions [72:15,19]
interest [41:11] [175:12,18]
interested [44:10] [155:3]
[211:15]
interject [18:25]
interview [77:5,9,13,16]
introduce [3:17]
introductory [102:12] [167:
14]
inventory [93:16,18]
investment [4:15] [161:10,11]
[198:10]
investmentgrade [161:10]
[198:10]
investment-grade [161:10]
[198:10]
investmentgradetype
[161:11]
investment-grade-type
[161:11]
investor [43:4,10]
investors [114:8]
involved [75:19] [76:12]
[95:9,11] [101:8]
involvement [24:2]
irrespective [35:14] [99:7]
[146:22]
isnt [16:23] [17:17,21]
[27:23] [32:22,25] [33:22]
[39:21] [41:7,11] [76:12]
[77:24] [82:18] [88:12]
[94:5] [101:17] [107:10]
[110:17] [120:14] [135:6]
[141:23] [145:2] [146:15]
[148:20] [150:21,23] [158:
5] [160:5] [161:4] [162:20]
[164:21] [172:4] [174:12,24]
[176:13,19] [177:25] [179:
16] [180:5,10] [186:3]
[189:21] [190:13] [191:14]
[201:13] [202:13] [204:5,22]
[205:6,17] [206:21] [207:7]
issues [65:15]
issue [11:15] [19:2] [52:6]
[66:7] [96:13,14] [98:21]
[99:13,17] [104:9] [113:21]
[176:4]
issues [8:24,25] [23:14,15,16

,19,22] [49:20] [50:11,23,25]
[59:18] [61:23] [72:11]
[91:24] [96:3] [98:3] [100:3
,6] [101:8] [102:4,5] [104:16]
[107:7,8,15,17] [108:8]
[114:9] [125:24] [202:8]
itself [35:24] [43:15] [75:6]
[85:14] [99:11] [163:22]
iv [177:6]
ive [5:9] [8:22] [10:20] [11:13
,16,17,18] [32:19] [66:4]
[100:6,22] [104:15] [108:25]
[119:25] [148:9,15,16]
[149:15] [151:4] [157:25]
[171:10]

J
jacket [128:17]
john [61:19]
johns [182:4]
jpmorgan [64:20] [65:5,8]
jpmorgans [65:2]
judge [101:9]
judges [9:5]
judgmentally [174:21]
june [180:23] [181:4] [188:7]
[190:5]
junior [62:2,3]
juries [9:5]
jury [101:9]
justin [2:] [3:21] [162:12]

K
keep [30:21] [52:11]
key [197:19] [199:22]
kind [5:24] [11:5] [47:17]
[50:12] [92:17] [104:3]
[113:21] [115:3,7] [129:9]
[134:3] [149:25] [166:2]
kinds [4:25] [107:17]
knew [40:10] [58:14,16,19,20]
[60:14,23,25] [184:9]
know [4:19] [12:8] [13:4]
[18:16] [31:16] [35:7,23]
[36:14] [37:6] [44:3,6,23]
[51:10,11] [53:8] [55:12]
[56:17] [58:17,24] [64:2,4,10]
[71:11,13] [72:12] [75:6]
[77:23] [79:2,5,9,20] [80:2]
[82:5] [83:9] [87:12,16]
[88:16] [89:11] [93:15]
[94:20] [96:4,12] [99:8]
[107:19] [109:14] [110:9]
[111:7] [112:14] [113:20]
[115:2] [117:18,20] [122:2
,24] [125:3] [133:24] [136:7]
[141:3,21] [142:16] [143:15]
[144:20] [148:4] [149:24]
[150:8] [152:6,12] [153:22]
[154:24] [156:9,12,17]
[157:21] [161:10] [165:3,4
,11] [168:12] [170:15,18,22
,25] [171:3,22,23,24] [172:
6,8,14] [176:25] [177:2,14,16

27/03/2008 PFEFFER, ALLEN M.

,21,23,24] [181:14,17,18]
 [183:14] [184:7,9] [185:22]
 [186:19] [187:4,7,23,24,25]
 [188:3] [189:10] [190:15,17]
 [195:18] [197:16] [201:6]
 [204:25] [205:11]
knowing [86:22] [142:16]
 [152:23] [167:17] [184:24]
knowledge [18:18] [72:14]
 [147:3] [166:10] [170:3,8,10]
 [171:17]
knows [18:15]

L

labeled [187:22]
lack [44:12] [99:16] [113:20]
 [114:3,17] [115:3] [174:19]
language [163:6] [198:9]
large [97:21] [98:20] [157:17
 ,21] [175:22]
largely [161:8]
larger [191:18]
last [36:23] [37:6] [126:2]
late [73:11] [98:10] [132:11]
 [171:8] [172:12] [183:25]
 [187:18]
later [31:7] [66:2] [92:10]
 [133:17] [135:6] [172:23]
law [19:18] [100:21,22,25]
lawyers [77:4,21] [79:11]
 [80:4]
lead [46:11,15] [62:25]
 [152:14] [187:12] [202:9]
 [206:19]
leading [191:12]
leads [44:15] [88:9] [117:14]
leap [43:12]
least [117:20] [123:15]
 [145:13] [164:14]
leaving [189:17]
led [95:18]
left [179:8]
legal [96:12,13,14] [101:8,25]
legalink [3:5,24]
less [12:11] [124:2] [131:8]
 [136:10] [145:18] [161:8]
 [168:2] [179:21]
lesser [89:11] [172:22]
let [18:24] [19:14] [22:16]
 [24:19] [31:21] [32:8]
 [41:4] [56:18] [57:24]
 [59:6] [69:9] [82:4] [95:4]
 [98:19] [125:10] [142:14]
 [143:20] [155:19] [159:19]
 [168:18] [177:5] [193:22]
 [195:5,23]
lets [13:3] [19:23] [25:4]
 [27:6] [33:4,17,20] [34:13]
 [37:17] [52:11] [66:6]
 [83:12] [98:7] [106:15]
 [108:11] [120:19] [122:13]
 [128:23] [140:2,13] [197:17]
letters [127:3]
level [10:3] [44:8] [45:20]
 [49:13] [51:2] [165:20]

levels [49:11] [92:24]
liabilities [10:19] [11:3]
 [12:19] [90:12,25] [91:3]
 [127:4] [139:21]
liabilitys [90:13]
life [70:17]
likely [49:16] [125:25] [157:
 10] [186:12] [199:20]
liking [32:6]
limited [80:13] [92:23]
limiting [92:20]
line [59:10] [66:10] [128:23]
 [134:17] [199:20] [208:19]
 [209:4]
linklaters [2:8] [3:10,22]
 [19:7] [20:9] [23:10]
liquidate [67:16] [73:4]
 [92:17]
liquidated [69:23] [74:6]
liquidating [97:25]
liquidation [3:14] [14:4]
 [67:10,15,25] [69:20]
 [70:19] [71:17] [73:9,15,18
 ,20] [75:4] [109:15] [158:13]
 [159:10]
liquidity [44:7] [49:19]
 [50:10] [72:4] [173:12]
 [174:9]
list [129:12]
listed [80:15]
lists [129:19] [130:17]
literature [9:13,15] [91:16]
litigation [23:23]
little [5:6] [165:12] [181:8]
 [184:25]
llp [2:8]
loans [159:24]
locate [154:14]
london [84:5]
long [45:14] [101:19] [134:17]
longer [58:7]
look [8:9] [13:24] [14:6,12,14]
 [15:21,23,24] [16:6] [19:3]
 [26:7] [36:17,22] [37:5,11]
 [40:24] [43:24] [46:16]
 [47:17] [54:21,22] [65:22,24]
 [66:6] [80:16] [90:11,24]
 [92:19] [93:3] [96:5] [99:3]
 [101:9] [104:21] [112:15]
 [115:14] [116:12,13] [123:
 13,25] [128:9] [129:10]
 [134:24] [145:17] [162:12]
 [171:7] [175:19] [182:15]
 [187:21] [193:9,22] [194:20]
 [196:24] [200:13,14] [202:
 8]
looked [5:11] [6:2,4,21]
 [7:2,4,24] [8:7,11] [18:21]
 [21:14] [49:4] [53:6,7,8,21]
 [65:9,11] [69:5] [96:18]
 [99:22] [100:6] [103:12]
 [145:11] [154:19,22] [165:
 9] [176:4] [202:5]
looking [7:7] [16:16,20]
 [26:3] [37:9] [41:2,5] [44:4
 ,6] [58:6] [75:10] [81:25]
 [84:17] [89:15] [93:17]
 [106:9] [109:15] [142:17]
 [163:10] [185:10] [194:18]
 [202:3]
looks [22:9] [59:10] [66:10]
 [81:24] [82:10] [125:16]
los [2:] [3:5,24]
losing [45:17]
lot [16:25] [43:13] [44:5]
 [46:24] [47:8] [66:4] [99:25]
 [102:3,5] [103:6,7] [104:16]
 [125:5] [134:6] [144:14]
 [167:14]
low [178:22] [201:13] [202:12]
 [203:16] [204:5,22] [207:5]
lower [58:2] [59:7] [62:7]
 [84:12] [176:12,22] [183:6]
 [197:12] [206:4,20]
lowered [176:18] [183:4]
lunch [136:2,13] [137:13]
 [156:18]
luncheon [136:17]
lynch [155:16]

M

magnitude [111:7]
maintain [50:9]
majority [197:21] [199:24]
making [9:5] [19:24] [20:4,8]
 [58:20] [60:17] [67:6]
 [105:12,17] [147:21] [185:
 17]
man [150:12]
management [114:8] [156:14]
 [158:23,24]
manner [111:19] [146:19]
march [3:8] [210:6] [211:9]
marginal [107:16]
mark [121:15] [122:7,16]
 [123:2] [125:12] [128:11]
 [134:15] [162:6] [188:19,23]
marked [56:15] [81:19]
 [122:22,25] [125:18] [128:
 12] [134:23] [162:14] [180:
 20]
market [4:17,21,23] [5:4]
 [6:2,3,4,8] [7:4] [9:17,21]
 [10:9,17] [11:3,17] [12:24]
 [14:2,6] [15:11,15,16,21]
 [16:2,17,20] [17:6,9] [22:8]
 [24:23] [25:4,6,7] [26:20]
 [29:3] [31:22,23] [32:10,12]
 [33:7,13,18] [34:3] [43:23]
 [53:9,21,24] [59:10,15]
 [60:2,6,10,18,19] [62:14,17
 ,20,21] [63:14] [64:8] [88:15]
 [89:15,21,22,25] [90:4,14,16]
 [91:6,13] [92:15] [93:6,9,13
 ,15] [99:7,8,10] [104:17,18]
 [107:6,16] [108:8] [109:15
 ,16,22] [111:6] [113:6]
 [115:7,8,22,23] [116:2,12,16
 ,24] [117:7,25] [118:11,12,19]
 [119:10,14,20] [120:2,5]
 [121:12,20] [124:10] [126:
 23] [127:6] [130:24] [132:7,10
 ,15,19,21] [133:5,6,9,10]
 [134:8,9] [135:3,18] [137:15
 ,24] [138:19] [139:8,9,23]
 [140:5,18] [141:11,13,17]
 [142:6,7,10,18] [143:7,11,25]
 [144:4] [152:15,19,22]
 [153:2,6,12,13,22] [154:4,10]
 [156:10,11,12] [160:22,23]
 [161:3,9,17] [162:19,22]
 [173:13] [175:22] [206:18]
marketability [44:12] [154:20]
 [173:12] [174:19]
marketable [30:25] [96:5]
marketbased [115:7] [118:19]
market-based [115:7]
 [118:19]
marketing [46:5]
marketplace [139:22] [175:
 20]
markets [7:8] [24:13] [127:7]
 [156:21,22]
marks [83:16,19] [136:16]
 [137:5] [207:15]
marriage [211:14]
mary [56:16,19]
math [131:20] [135:21,23]
 [139:16,24]
mathematical [113:5]
mathematics [131:23]
matter [3:13] [22:17] [23:8,18]
 [43:7] [54:3,15,22] [62:5]
 [80:8,21] [122:12] [128:3]
 [131:21,22] [155:7] [156:20]
 [157:17] [171:25] [211:16]
may [4:24] [12:5] [17:24]
 [21:14] [27:17] [29:18]
 [32:17] [35:19] [44:9]
 [45:7,12,13,19,22,23]
 [46:3,6] [53:11] [79:6]
 [87:11] [93:11,17] [98:3]
 [100:16] [108:5,6] [114:22]
 [122:4] [137:17] [148:9]
 [151:13] [155:2] [159:9]
 [160:3] [180:4,13] [181:16]
 [188:5]
maybe [66:3] [102:12]
 [136:10] [186:7] [191:12]
mean [30:20,21,23] [31:12]
 [32:16] [34:2] [36:14,16]
 [44:23,24] [47:2] [49:17,18
 ,23] [50:5,8,9] [58:9] [59:20
 ,25] [76:7] [84:7] [92:25]
 [97:18] [100:10,11] [104:13
 ,15] [117:9] [132:14] [134:6]
 [138:3] [141:10] [144:12]
 [151:5] [154:10] [160:14]
 [178:11,14] [198:9]
meaning [9:22,24] [46:7]
 [49:24] [131:9]
meaningful [157:22]
means [38:23] [39:4] [76:8]
 [97:17] [110:25]
meant [58:10] [59:24] [60:2]
 [104:14] [113:14] [142:23]
 [143:23] [149:12] [161:21]

27/03/2008 PFEFFER, ALLEN M.

[202:15,16] [203:23]
measure [93:14] [175:23]
measured [135:17]
measures [16:4] [93:17]
meet [10:16]
meeting [57:9,11,19] [60:21]
members [61:16,18] [77:4]
 [79:5] [82:18]
memorialized [60:23]
mentioned [8:8] [44:2,19]
 [45:6] [104:15] [107:7]
 [128:3]
merrill [155:16]
method [15:9] [31:4,22,23]
 [34:6] [41:9] [69:18] [142:6]
 ,8,11,19,20] [144:13] [191:
 21,24] [206:13]
methodologies [9:9,12,15]
 [13:16,25] [14:20] [15:8]
 [27:3] [43:19] [76:10,16]
 [106:19] [109:6] [173:25]
methodology [24:12,21]
 [27:18,20,24] [28:3,6]
 [29:22] [30:2] [31:14]
 [34:15] [35:17] [43:20]
 [46:17,20] [85:19] [91:11]
 [96:16] [97:6] [98:16]
 [142:14] [147:24] [151:6]
 [178:15] [180:13] [190:23]
 [192:16,20] [199:12] [203:
 21,24] [204:12,16] [205:23]
methods [13:20] [113:7,9]
 [116:14] [143:14] [144:7]
michael [61:17]
mid [49:2] [183:24] [187:17]
 ,18]
millar [170:13,16,23] [171:18]
 [172:3,7,9]
million [26:8,10,12,15,19]
 [27:7,8,13] [33:18,19,20]
 [62:12] [63:25] [64:5]
 [88:4,7,11,15] [90:7,16]
 [94:13] [98:10,17] [105:3,20]
 [106:10,25] [109:22] [121:
 3] [122:3,5] [123:22] [124:3]
 ,5,6,11] [127:6,13,14,16]
 [129:7,20] [130:20] [131:4]
 ,11,12,14,19,23] [135:5,10]
 ,12,18,22] [137:25] [138:6,7]
 ,10,11,14,20] [139:11,12,25]
 [140:13,19] [141:4,6,16,22]
 ,23] [163:20,22] [166:20]
 [167:9] [177:8,10] [178:2]
 [189:20] [190:7,13] [191:16]
 ,18,23] [205:21] [206:8]
mind [8:10,14] [153:18,20]
minus [131:21,25] [132:4]
 [135:22] [139:11]
minutes [64:10] [94:20]
 [107:3] [168:16]
mischaracterized [144:10]
mischaracterizing [118:16]
 [190:14]
misinformation [113:20]
 [114:3]
missing [28:4]

misspoken [122:4] [137:17]
mistaken [114:19] [185:15]
mistakes [188:25] [189:25]
 [190:3]
misunderstanding [199:8]
mode [73:20,21] [74:2,4]
model [46:4] [47:18] [70:12]
 ,15] [71:8] [93:2] [147:14]
 [159:7] [169:21] [200:10,17]
 [201:2,6,7] [204:15]
modeled [95:20] [103:19]
moment [31:21] [82:2]
 [126:9] [129:15] [187:11]
 [188:23]
moments [99:9]
money [38:23] [39:8,10]
 [40:3] [41:10] [174:5]
monkey [82:7,9]
month [17:23] [22:24] [54:7]
months [176:5] [188:3,6,8]
 [190:6] [206:25]
morning [4:7,8] [82:7]
motion [76:8,12]
move [82:3]
movement [161:21]
movements [104:17,18]
 [107:7,16]
mr [3:19,21] [4:6,7] [7:10,23]
 [9:7] [10:11] [11:6,22]
 [13:9,21] [14:22] [16:24]
 [17:22] [18:11,14,24]
 [19:14] [20:3,4,7,15,16,18]
 ,21] [21:3,20,24] [22:3,6,12]
 ,16,18] [23:5,17] [24:16,20]
 [25:5,18] [26:22] [27:16]
 [28:25] [29:12] [30:13]
 [31:10] [32:5,15,23] [33:2,10]
 ,23] [34:9,23,25] [35:6,13]
 [36:13,24] [37:2,20] [38:9,21]
 [39:12,18] [40:5,22] [41:13]
 [42:5,7,11,25] [43:6] [44:21]
 [45:10] [46:14] [48:2,11,18]
 [49:15] [50:16] [51:9,12,14]
 ,15,16,22,23] [52:3,7,11,21]
 [53:19] [54:5,17] [55:6,10,12]
 ,19,23] [56:2,11,16] [57:13]
 [59:23] [60:12,24] [62:10,23]
 [63:16,23] [64:3,9,17,22]
 [65:4] [66:21] [67:11,21]
 [68:4,9,25] [69:11] [70:5,11]
 [71:2,18] [73:5,12,17,24]
 [74:19] [76:19,22] [79:13]
 [80:5,12,24] [81:9] [82:5,13]
 [83:4,9,12,14,21,22,23]
 [85:21] [86:13] [87:4,14]
 [88:13] [89:3,14] [90:10,19]
 [91:9,18] [95:15] [96:11]
 [97:13] [98:10,18] [100:5,10]
 ,13,17] [101:18] [104:8]
 [105:4,21] [106:3,7,12]
 [108:17,24] [109:5] [110:8]
 ,18,23] [111:16] [112:9,25]
 [113:5] [114:6,13,16]
 [116:11] [117:4,24] [118:23]
 [119:3] [120:12,15,22]
 [121:6,14,16,18] [122:6,8,10]

,12,15,18,20] [123:4,6,7,8,12]
 [124:12] [126:11] [127:9,18]
 ,25] [128:11,20,22] [129:2,12]
 ,16,21,23,24] [130:2] [131:
 6,15] [132:2,8,22] [133:2,20]
 ,24] [134:15] [135:7,13,20,25]
 [136:4,5,7,9,13] [137:7,12]
 ,13] [138:2] [139:13] [140:7]
 [141:8,25] [142:9,21,23]
 [143:17,22] [144:5] [145:6]
 ,15] [148:21] [149:8,22]
 [150:7] [151:3,17,23]
 [152:8,10,17,25] [153:8,24]
 [154:6,16] [159:17] [160:10]
 [161:5,24] [162:6,9] [164:6]
 [165:2] [166:14,25] [167:12]
 [168:15,17,21] [169:3,10]
 [171:14,21] [172:5,13]
 [173:19] [174:7,13] [176:14]
 ,21] [177:12] [178:5,19]
 [179:24] [180:18] [183:12]
 [184:5,19] [186:4,23]
 [187:14] [188:18,22] [189:
 14,22] [191:20] [192:13]
 [193:4,19] [194:16,25]
 [195:21] [196:3,19] [197:6]
 ,15] [198:6,17,21,23] [199:
 7] [200:6] [201:3,15,19,23]
 [202:14,21,25] [203:3,4,7,8]
 ,10] [204:6,23] [205:18]
 [206:22] [207:8,11,13]
 [208:]

muddling [40:12]
multiple [16:5,8] [30:10]
 [31:12,15,17]
multiples [16:7]
multiplied [7:8]
multiply [25:11]
multiplying [6:10] [26:4]
myles [72:21]
myself [162:11]

N

name [16:19] [187:16]
namely [115:10,24] [118:10]
names [61:9]
narrow [5:5]
nature [23:8] [54:15] [93:22]
 [104:25] [111:21] [151:8]
necessarily [69:24] [70:23]
 [160:25] [161:13]
necessary [153:21,25]
need [21:2] [32:17] [42:17]
 [45:15] [46:3,7] [74:10]
 [94:7] [120:16] [121:19]
 [123:25] [126:21] [136:8]
 [162:12]
needed [61:23] [80:16]
 [81:15]
needs [149:17]
negative [45:12]
negatively [161:18]
neither [10:5] [95:12]
net [31:17] [43:25]
new [2:] [3:11] [84:5] [134:8]

[210:4] [211:7]
next [37:18] [39:15] [82:5]
 [136:14] [184:3] [190:11]
 [192:2]
nicole [61:19]
night [17:17,21] [18:2]
nine [171:8,13,20] [188:8]
 [190:5] [206:25]
ninepoint [171:8,13,20]
nine-point [171:8,13,20]
nineties [49:2]
ninth [66:10]
no [7:18] [14:18] [15:19]
 [19:17,21] [21:8,9] [22:19]
 [24:9] [26:10] [31:5] [38:11]
 [42:15] [45:5] [46:23]
 [47:21] [48:16] [58:7]
 [59:24] [62:6] [64:18,24]
 [65:3] [68:3,10] [69:6]
 [73:2] [74:20] [77:12]
 [81:3,10] [82:22] [86:18,21]
 [88:23] [97:15] [100:20]
 [101:4,6] [103:3] [104:2]
 [109:8] [110:21] [119:23]
 [120:7,9] [123:20] [124:13]
 [128:15] [138:23] [145:12]
 [149:9,10] [151:19] [152:12]
 [154:2] [161:25] [167:24]
 [169:11] [170:3,8] [172:2,24]
 [174:15] [175:2] [177:23]
 [180:15] [181:10] [188:22]
 [190:14] [193:24] [196:22]
 [202:23] [203:4,7,10,14]
 [206:4,9,23] [207:9,11]

non [67:9,13,14]
nongoing [67:9,13,14]
non-going [67:9,13,14]
nonpublic [27:17]
nor [166:16] [191:25] [211:15]
 ,16]
normal [49:21]
notary [210:17] [211:6]
note [57:14] [58:20] [66:9]
 [164:15]
noted [137:3] [155:15]
 [207:17]
notes [57:2,6,9,17,21]
 [58:15] [60:15,19] [61:7]
 [139:17,19] [155:17]
nothing [8:14] [113:15]
 [155:12] [190:20] [207:13]
notice [76:2] [116:4] [188:24]
nows [168:21]
number [6:10] [19:16]
 [25:12] [26:4] [34:4] [63:11]
 ,25] [64:11] [73:7] [76:2]
 [90:7,13] [93:19,20] [101:7]
 [107:12,13,14,21,22]
 [108:3] [111:5] [115:17]
 [122:2] [123:2,16] [126:5,8]
 [128:4,7] [129:13,25]
 [130:4,18] [141:21,23]
 [142:3,4] [150:17] [157:14]
 [163:23] [180:5] [190:12]
 [191:18,22] [203:25]
numbers [58:2] [63:19]

27/03/2008 PFEFFER, ALLEN M.

[90:21] [91:21,25] [107:4,10,23] [108:2] [115:18] [129:8] [130:8] [131:7,8] [134:7] [136:12] [139:17] [156:17] [207:5,6]
numerator [164:20,22] [165:4]
 O
oakwood [3:13] [5:3,7,10,12,15,21,25] [6:3,5,9,14,17] [7:19] [8:4,12] [13:4,5] [17:5,9,12] [18:10,20] [20:23] [21:19] [22:5,10,14] [23:20,21,22] [24:2,8] [25:19] [35:15,19] [48:9] [51:7] [52:16,17] [53:25] [55:5,15,18] [56:10] [58:10] [68:7,12] [72:15] [78:4,6] [95:22] [96:19,22,25] [97:19] [98:10] [99:11] [111:13] [112:21,22] [113:7] [114:4] [116:19] [120:3] [130:25] [135:3] [138:19] [142:16] [154:13] [159:23,24] [160:23] [161:8] [162:19] [171:4,8] [172:11] [177:7,10] [178:3] [183:23] [197:13] [198:19] [199:11,15]
oakwoods [7:7] [9:18] [25:24] [26:8] [45:6,11] [51:25] [52:25] [53:17] [59:17] [64:8] [65:15] [84:20] [85:15] [116:25] [119:14,15,20,22] [124:15] [125:21] [126:5,14] [127:7] [132:6] [133:16] [138:19] [142:7] [143:11,24,25] [155:23] [160:9] [173:12] [183:4] [189:2,19] [191:15,17] [194:3] [197:19,22] [198:4,15] [199:3,22,25] [205:21] [206:7] [207:3]
oath [185:21] [186:19] [188:13] [210:6]
object [19:8]
objection [7:10,23] [9:7] [10:11] [11:6,22] [13:9,21] [14:22] [16:24] [17:22] [18:11] [19:24] [21:20,24] [22:6,12] [23:5] [24:16] [25:5,18] [26:22] [27:16] [28:25] [29:12] [30:13] [31:10] [32:5,15,23] [33:2,10,23] [34:9,23,25] [35:6,13] [36:13,24] [37:2,20] [38:9,21] [39:12,18] [40:5,22] [41:13] [42:5,7,11,25] [43:6] [44:21] [45:10] [46:14] [48:2,11,18] [49:15] [50:16] [51:9] [52:3,21] [54:5,17] [55:6,19] [56:11] [57:13] [59:23] [60:12,24] [62:10,23] [63:16,23] [64:3,9,17,22] [65:4] [66:21] [67:11,21] [68:4,9,25] [69:11] [70:5,11] [71:2,18] [73:5,12,17,24] [74:19] [76:19,22] [79:13] [80:5,12,24] [81:9] [82:13] [83:4] [85:21] [86:13] [87:4,14] [88:13] [89:3,14] [90:10,19] [91:9,18] [95:15] [96:11] [97:13] [98:18] [100:5,10] [101:18] [104:8] [105:4,21] [106:3,12] [108:17,24] [109:5] [110:8,18,23] [111:16] [112:9,25] [114:6] [116:11] [117:4,24] [118:23] [119:3] [120:12,15,22] [121:6] [124:12] [126:11] [127:9,18,25] [131:6,15] [132:2,8,22] [133:2,20] [135:7,13,20] [138:2] [139:13] [140:7] [141:8,25] [142:9,21] [144:5] [145:6,15] [148:21] [149:8,22] [150:7] [151:3,17,23] [152:8,17,25] [153:8,24] [154:6,16] [159:17] [160:10] [161:5,24] [164:6] [165:2] [166:14,25] [167:12] [169:10] [171:14,21] [172:5,13] [173:19] [174:7,13] [176:14,21] [177:12] [178:5,19] [179:24] [183:12] [184:5,19] [186:4,23] [187:14] [189:22] [191:20] [192:13] [193:4,19] [194:16,25] [195:21] [196:3,19] [197:6,15] [198:6,17,21,23] [199:7] [200:6] [201:3,15,19,23] [202:14,21] [204:6,23] [205:18] [206:22] [207:8]
objections [114:16]
obligation [85:8] [91:4]
obligations [10:16]
observers [47:13] [93:3] [199:19]
obtain [65:7]
obtained [88:7]
obtaining [92:11] [96:21]
obviously [93:10] [99:17] [116:13] [128:4] [175:15] [184:8]
occasion [8:19] [105:13]
occasions [34:19,22]
occurred [86:11] [92:9] [107:5] [159:14] [160:4] [167:5] [172:23]
october [133:18] [156:18]
odriscoli [77:7,9]
off [51:18] [65:21] [67:24] [74:3] [83:12,16,17] [128:17] [136:16] [143:18] [168:23] [207:16]
offer [188:12]
offered [188:16]
offhand [166:9]
office [21:6] [117:18] [125:4]
offices [3:10]
official [189:15]
officially [17:25] [181:23] [194:9]
ohc [3:13]
ohelt [134:21] [208:13]
okay [4:25] [5:7,24] [10:14] [11:11] [14:24] [17:4,15] [18:3] [19:17] [21:11] [22:3] [23:3] [24:7] [25:2,11] [26:7] [27:11] [28:8] [29:25] [30:7] [31:3,21] [32:9,18] [33:6] [34:5] [35:10,21] [36:19] [37:11,15,22] [38:18] [39:5] [41:16] [43:3] [48:9] [49:8] [54:2,8] [58:6] [61:20] [65:12] [66:6] [67:5] [69:7,25] [70:21] [71:15] [73:15] [76:25] [78:3,7] [79:24] [81:4,25] [82:11,25] [83:5,14] [84:13] [85:5] [86:8] [88:24] [90:15] [92:2] [95:7] [97:4] [98:13] [102:7] [105:17] [107:18,25] [108:11,14] [110:11] [115:5,13] [116:4] [118:5,21] [119:8,13,18] [123:7,23] [124:14,18,21,23] [125:10] [126:9] [127:5] [128:17,21] [130:13,15,16] [131:18] [132:5,18] [134:10] [135:24] [138:8,13] [139:4] [142:5] [143:23] [148:17,24] [149:6] [153:4] [155:14] [157:23] [166:7] [168:14,21] [169:12,16,23] [172:15] [174:3,9] [175:25] [178:11,16] [179:15,19] [180:2,9,12,16] [181:23] [182:7,11,16,18] [186:25] [188:5,11,17] [189:11] [190:19] [194:23] [195:5,8,19] [196:5] [197:17] [202:18] [207:14]
once [19:16,20] [110:16] [145:13] [169:5] [172:15] [186:25]
one [4:21] [8:19] [12:3,15,17] [13:13] [14:12,23] [15:3,5,7,14] [16:21] [17:2,13,14] [19:16,19] [20:24] [22:9] [24:21] [25:24] [26:3] [28:18,23] [29:20] [33:4,14] [34:18,21] [35:23] [38:22] [40:23] [43:15,16] [45:15] [51:25] [52:16,25] [56:19] [67:7,8,12] [71:3,4] [74:13] [85:17] [86:4,25] [88:9] [89:6] [91:12,13,14,21] [98:7] [99:4] [103:10] [105:13] [107:18] [109:12] [114:24] [115:19] [117:6] [130:3] [134:15,19,21] [139:23] [140:25] [143:21] [148:15,17] [149:16] [150:3] [152:18] [157:19] [159:11] [162:10] [164:8] [171:23] [174:4] [175:19] [176:6] [177:16] [178:24] [179:20,25] [180:22] [182:12] [186:6] [190:25] [197:8] [205:15]
ones [46:12] [66:6] [137:19] [152:2] [183:10] [184:22] [185:18] [187:13,14] [194:14]
operate [67:18] [68:17,23] [72:16,22] [74:18] [75:7] [158:8]
operated [67:19]
operating [68:17,23] [72:20] [73:22] [74:21] [75:7] [147:17] [158:7,15]
operation [95:17]
operations [41:25] [50:18] [95:2] [156:6] [157:3,9] [158:19]
operator [3:5]
opine [4:22] [6:24] [24:5,7] [55:14] [76:21,23] [186:2] [193:5]
opined [10:25] [11:20] [177:13] [193:8]
opining [4:12] [14:12] [55:4,17] [116:14] [164:2]
opinion [6:19] [10:14,20] [11:13] [13:7,23] [14:16,17] [24:4] [48:20] [56:9] [68:13,16,18,22] [69:2,10] [75:3] [80:13] [85:6] [102:13,18] [120:2] [142:10] [145:9,12] [146:7,9,10] [150:20,24] [151:15,18,20] [152:4,15] [153:5,22] [156:2] [164:5] [167:22,24] [168:11] [176:5,7,8] [188:13] [190:21] [191:4] [193:12,20] [195:4] [201:11] [203:16,18] [204:8,9,10,17] [205:3,4] [206:4,6,9]
opinions [5:2] [9:3,17] [80:7,11] [81:5] [82:15] [100:3] [101:25] [153:5,11,13] [188:15]
opposite [156:21]
option [44:3] [178:24] [179:2] [195:7,24] [196:6,11,14,17,23] [200:18]
options [47:5] [73:8] [92:13] [93:25] [178:15]
order [36:21] [60:9] [92:7] [99:24] [138:9] [153:21] [184:13]
ordinary [15:6] [30:4]
organization [62:2]
origin [152:6]
original [46:12]
otherwise [193:8]
outcome [86:9]
outlined [148:5]
outlook [47:15]
output [200:10,11]
outstanding [6:10,15] [7:9] [25:13] [27:12,13] [32:12,13] [33:20] [63:11,22] [121:3,13] [123:16,21]
oversimplification [117:5]

27/03/2008 PFEFFER, ALLEN M.

overwhelming [197:21]
 [199:24]
own [8:2,3] [14:17] [28:22]
 [53:17] [77:4] [144:6]
 [151:10] [191:4] [205:5]
owns [75:18]

P

p.m [136:15,17] [137:3,4]
 [168:22,25] [207:15,17]
package [125:2]
pad [57:15]
page [57:25] [58:6,7] [59:7]
 [62:7] [66:8] [75:10] [84:3]
 [115:18,20,21] [122:24]
 [129:10,13] [130:6] [134:25]
 [138:18] [155:19,21] [160:
 21] [163:10,23] [164:15]
 [165:19] [169:4] [170:2,7,12]
 [172:19] [173:9] [177:5]
 [181:6,19,21] [182:2,6,10,12
 ,15,17,21] [186:20] [188:24]
 [190:6,11] [191:11] [193:23]
 [194:7,15] [195:6] [196:5,14]
 [197:17,18] [200:13,15]
 [201:8] [208:4,7,19] [209:4]
pages [57:15] [78:15,18,22]
 [79:2,9,11,19,21] [80:2]
 [84:17] [115:6] [189:25]
 [192:15] [200:8]
paging [82:2]
paid [90:18] [94:14] [97:12]
 [110:13] [118:9] [119:19]
 [159:22] [161:22] [164:17]
 [167:11] [177:7] [179:6,16]
 [206:18]
paper [161:11]
papers [65:22,23]
par [175:14]
paragraph [84:18] [86:5]
 [115:15,16,21] [116:23]
 [155:20,22] [160:22] [163:
 10] [170:7,12] [172:7]
 [173:9] [177:6] [182:21]
 [184:3] [185:4,13,14]
 [186:2] [187:2] [193:23]
 [194:10]
paragraphs [115:17] [200:7]
paralegal [61:19]
part [5:21] [7:11] [25:10,14]
 [27:18] [67:16,17] [75:22]
 [76:11] [102:18] [136:11]
 [154:15] [157:18,21,22]
 [163:3,4] [174:23] [196:23]
participants [29:4] [92:16]
particular [4:14] [16:2]
 [33:24] [44:15] [50:25]
 [58:24] [75:24] [76:10]
 [81:7] [82:6] [85:14] [114:22]
 [116:17] [121:19,25] [141:
 12] [153:18] [154:11,14]
 [165:20] [173:4] [183:15]
 [188:22] [191:13]
particularly [19:2] [47:9]
parties [23:22] [211:15]

parts [7:12] [67:18,19,24]
pass [188:6]
past [13:8,18,25] [15:7]
 [36:8,9,11,18] [51:7,25]
 [52:2,16,17] [53:2,18,25]
 [55:5,18] [56:10] [65:16]
 [100:7] [114:9] [183:3]
patterson [61:19]
pause [122:14] [125:11]
 [128:24] [168:20] [180:17]
pay [12:11,12] [43:4,10,15]
 [44:16] [50:11] [152:23]
 [179:22]
payable [95:11] [165:21]
paying [119:10]
payment [50:19] [96:23,24]
 [134:4]
payments [175:12,18]
pending [114:14]
people [25:3] [50:12] [77:14]
 [92:12] [96:16] [182:22]
peoples [14:8]
per [25:8,11] [26:4]
perceive [207:4]
perceives [29:9] [146:18]
percent [41:18] [81:17]
 [82:11,14] [110:14] [138:7]
 [140:11,12,20,22] [164:11
 ,14,20] [165:24] [166:5]
 [185:11] [187:7] [192:19]
 [200:14,16]
percentage [174:21]
perform [56:8] [60:9]
performance [47:12] [183:3]
 [194:4,19]
performed [53:13,17] [70:12
 ,18] [142:12,13]
performing [89:22] [163:13]
perhaps [53:11] [98:7]
 [125:15] [195:23]
period [10:10] [23:4] [41:25]
 [42:3,12,18] [54:14] [107:6]
 [131:4] [147:3] [161:4]
 [177:11] [178:4]
person [202:10]
personally [18:6] [77:10,12]
 [118:8]
persons [57:11]
perspective [92:25]
pessimistic [169:9,12,24]
pfeiffer [3:12] [4:1,7] [5:1]
 [6:1] [7:1] [8:1] [9:1] [10:1]
 [11:1] [12:1] [13:1] [14:1]
 [15:1] [16:1] [17:1] [18:1]
 [19:1] [20:1] [21:1] [22:1]
 [23:1] [24:1,20] [25:1]
 [26:1] [27:1] [28:1] [29:1]
 [30:1] [31:1] [32:1] [33:1]
 [34:1] [35:1] [36:1] [37:1]
 [38:1] [39:1] [40:1] [41:1]
 [42:1] [43:1] [44:1] [45:1]
 [46:1] [47:1] [48:1] [49:1]
 [50:1] [51:1,23] [52:1]
 [53:1] [54:1] [55:1] [56:1]
 [57:1] [58:1] [59:1] [60:1]
 [61:1] [62:1] [63:1] [64:1]

[65:1] [66:1] [67:1] [68:1]
 [69:1] [70:1] [71:1] [72:1]
 [73:1] [74:1] [75:1] [76:1]
 [77:1] [78:1] [79:1] [80:1]
 [81:1] [82:1] [83:1,20,23]
 [84:1] [85:1] [86:1] [87:1]
 [88:1] [89:1] [90:1] [91:1]
 [92:1] [93:1] [94:1] [95:1]
 [96:1] [97:1] [98:1] [99:1]
 [100:1] [101:1] [102:1]
 [103:1] [104:1] [105:1]
 [106:1] [107:1] [108:1]
 [109:1] [110:1] [111:1]
 [112:1] [113:1,5] [114:1]
 [115:1] [116:1] [117:1]
 [118:1] [119:1] [120:1]
 [121:1] [122:1] [123:1]
 [124:1] [125:1] [126:1]
 [127:1] [128:1] [129:1]
 [130:1] [131:1] [132:1]
 [133:1] [134:1] [135:1]
 [137:1,6,13] [138:1] [139:1]
 [140:1] [141:1] [142:1]
 [143:1] [144:1] [145:1]
 [146:1] [147:1] [148:1]
 [149:1] [150:1] [151:1]
 [152:1] [153:1] [154:1]
 [155:1] [156:1] [157:1]
 [158:1] [159:1] [160:1]
 [161:1] [162:1] [163:1]
 [164:1] [165:1] [166:1]
 [167:1] [168:1] [169:1]
 [170:1] [171:1] [172:1]
 [173:1] [174:1] [175:1]
 [176:1] [177:1] [178:1]
 [179:1] [180:1] [181:1]
 [182:1] [183:1] [184:1]
 [185:1] [186:1] [187:1]
 [188:1] [189:1] [190:1]
 [191:1] [192:1] [193:1]
 [194:1] [195:1] [196:1]
 [197:1] [198:1] [199:1]
 [200:1] [201:1] [202:1]
 [203:1] [204:1] [205:1]
 [206:1] [208:9] [210:5,
 211:8]

pfeiffers [20:18] [52:7]
phelps [19:6] [20:8] [23:9]
 [75:18]
phrases [167:14]
picked [206:2]
picture [95:21] [98:5]
place [136:2] [143:21]
 [148:17] [174:14]
plainly [19:18]
plaintiff [2:] [3:20]
plaintiffs [176:18]
plan [71:23] [170:20] [171:8
 ,13,20]
planning [46:7]
platform [74:6]
plausible [105:11]
please [3:17,25] [13:20]
 [15:20] [33:5] [38:3] [40:9]
 [42:9] [45:9] [55:22,24]
 [57:11] [62:9] [111:3]

[114:13] [166:23] [178:7]
 [180:25] [181:20] [190:18]
 [196:7]
plus [15:16] [16:16] [127:19]
 [129:5] [130:21] [183:6]
point [9:18] [14:19] [49:14]
 [51:25] [52:2] [55:5,15,18]
 [66:2] [89:17] [90:9] [94:2]
 [103:11] [105:12] [114:5]
 [148:11] [155:17] [162:24,25]
 [163:22] [165:20] [168:3,16]
 [175:15] [176:6] [186:13]
 [200:23] [203:23]
pointed [79:19] [83:25]
points [45:25] [47:7] [49:12]
 [53:18] [99:5] [155:3,15]
 [172:9] [189:2]
poking [192:15]
policies [50:19,20]
poors [14:25]
portion [59:5] [60:10] [91:3]
 [119:18] [196:17]
portions [7:14] [73:19]
 [78:11] [82:16,22]
position [20:22] [25:16]
 [27:9,22] [30:25] [50:3,5,8
 ,15] [142:5] [150:3] [160:20]
 [169:8]
positive [39:25] [45:14]
 [160:16,17] [180:5]
possibility [71:5] [106:20]
possible [46:9] [117:9]
 [127:11] [141:10] [184:16]
possibly [134:11]
post [52:9] [53:19,20] [54:23]
 [55:8] [56:3,5] [155:22]
 [160:9]
postapril [52:9] [53:19,20]
 [54:23] [55:8] [56:3,5]
post-april [52:9] [53:19,20]
 [54:23] [55:8] [56:3,5]
postbankruptcy [160:9]
post-bankruptcy [160:9]
postseptember [155:22]
post-september [155:22]
potential [73:8] [92:15]
 [93:5] [96:4] [98:25] [153:19]
 [154:21] [155:18] [186:6]
potentially [21:7] [44:3]
 [45:18] [54:9] [164:9]
 [173:24]
practice [31:24] [45:2,8]
 [100:2]
preceded [181:16]
preceding [191:11]
predicament [72:4]
predicted [38:6,13,14,16]
 [39:24] [45:13]
prefer [29:19] [123:12]
preference [12:4]
preliminarily [145:11,19]
preliminary [55:17] [56:8]
premarked [3:2]
premise [68:19] [71:11]
 [133:5]
premium [44:13,18]

27/03/2008 PFEFFER, ALLEN M.

preparation [61:24] [170:23]
prepare [55:16] [61:23]
prepared [58:22] [149:10,11]
[172:11] [182:24,25] [188:
12] [201:9] [204:2] [206:25]
prepares [149:7]
present [2:] [36:5] [39:16]
[40:17] [42:21] [43:8]
[57:11] [104:5] [107:7]
president [61:22]
presume [157:17]
presumes [70:15]
presupposes [94:19]
pretty [79:18] [158:4] [198:20]
prevail [14:20]
previous [113:24] [183:21]
[190:6] [203:9]
previously [4:3] [11:21]
[56:14] [137:9]
price [6:11,15] [9:25] [25:12]
[43:15] [44:15] [63:8]
[65:20] [88:4] [95:10,21]
[97:8,16] [120:21] [124:15]
[125:5,16,20] [126:23]
[128:7] [129:5,12] [130:25]
[134:12] [138:9] [139:8,9]
[152:22] [161:21] [173:22]
[179:2]
prices [22:9,10] [24:13]
[59:22] [60:6] [65:14]
[84:2,5,6] [126:3] [133:7]
[137:15] [160:21,23] [161:
2,7] [165:9,20] [178:22]
primarily [38:17]
principal [38:20]
printed [182:7]
prior [19:5,13] [20:8] [22:5,15]
[31:15] [50:24] [75:8]
[146:2,3] [156:18,24]
priority [159:25]
privilege [19:17,20,21]
[22:2] [56:13]
privileged [20:12]
privy [71:24]
probabilities [197:8,10]
probability [196:16,24]
[197:4,13,20,22] [199:4,23
,25] [200:12,19]
probably [122:6] [136:9,13]
[188:9] [189:12] [193:7]
problem [89:19] [146:21]
[147:9,11,13] [148:2]
[158:22] [205:23,24,25]
[206:2]
problems [53:7] [147:23,24
,25] [151:5] [174:10]
proceeding [170:21] [172:17]
proceeds [103:15]
process [92:24] [106:23]
produce [205:13]
produced [125:4] [189:8]
production [189:15]
profession [4:20] [9:10]
[13:16,17] [14:21] [15:8]
[27:4] [29:22] [31:25]
[34:16] [45:3] [91:16]
[96:16] [97:6]
professional [4:9] [25:2]
[28:12,14] [29:7,9,14]
[30:3,8,9] [35:11] [40:2,11
,13,14,19] [41:4,6] [44:17]
[100:3] [111:14] [132:20]
[173:16,21] [188:13] [211:
6]
professionals [9:4] [49:25]
[174:11] [178:17]
professor [192:6]
profit [30:11]
programs [46:6] [50:17]
project [4:15] [42:15]
projected [36:10] [37:15]
[42:13,17]
projection [36:3,4] [150:20]
[172:7]
projections [46:8,12,21]
[47:12,17] [51:7] [144:24]
[145:21] [146:7,12,19,22,25]
[147:6,9,23] [148:7,14,18,24
,25] [149:2,7,10,15,19]
[150:4,6,11,14,16,17]
[151:15,16,21,22,25]
[152:2,7,9] [169:6,9,13,25]
[170:4,9,13,16,24] [171:3,19]
[172:3,9,10] [182:23,25]
[183:4,8,24] [184:2,10,15,17
,21] [185:3,5,6,8,11,12,13,15
,18,23] [186:2,7,11,16,20,21]
[187:3,8,9,12,19] [188:20]
[190:24] [192:9,18,22]
[193:18,25] [194:6,12,18,24]
[195:4] [197:24] [200:3]
proper [85:19] [86:4]
property [10:2,9]
proposal [159:22]
prospective [46:17]
prove [95:19]
provide [6:19] [75:2] [104:15]
[167:22] [168:11] [173:21,24]
[176:23] [177:19] [190:20]
[204:7,8]
provided [10:20] [11:13,14]
[23:13,21] [54:23] [65:24]
[82:14] [176:5] [181:4]
[200:17]
provides [133:12] [159:3]
[193:24]
providing [120:2] [176:6,8]
[204:17] [205:2]
public [6:3,12,13,18] [7:4,14
,21] [8:9] [14:6] [16:17]
[24:13,22] [27:8] [53:9]
[60:9] [126:23] [127:7]
[130:24] [210:17] [211:6]
publicly [15:23,24,25]
pull [122:13]
pure [131:21,22]
purport [123:10]
purported [149:15] [188:11]
purportedly [180:11]
purports [76:20] [98:22]
purpose [17:12] [35:23]
[60:4] [206:12]
purposes [60:5] [61:24]
[67:2] [70:8] [81:15] [123:15]
[193:6]
put [76:8] [147:14] [157:11]
[174:14]

Q

qualifications [76:9,18]
qualified [100:9,18]
quarrel [76:17] [176:10]
question [5:6] [11:9,20]
[18:12,13,17] [22:18]
[23:7] [24:8,18,19] [31:12,19]
[32:7,8] [34:11] [37:21]
[38:3,4] [41:4] [42:9,10]
[44:23] [53:12,15] [55:22,25]
[56:3] [60:20] [66:23]
[74:24] [75:23] [77:6]
[81:2] [91:10] [94:19]
[95:4,6] [96:13] [98:19]
[100:15] [101:20,23] [102:
9,10] [105:5] [107:10,25]
[110:2,3] [111:23] [112:15]
[113:3,23] [114:14,15]
[119:4,7] [132:24,25]
[134:16] [141:15] [143:19,20]
[144:10] [149:25] [160:13]
[166:23,24] [167:2,3,13,15
,16] [168:4] [178:7,8] [195:
23] [196:25] [197:19] [198:
24] [199:22] [201:16,18,21
,22,24] [202:19,22,24]
[203:2,3,5,9,12,13]
questioning [134:18]
questions [18:4] [19:3,11]
[20:12,17,20,25] [33:3]
[38:10] [52:8,10] [75:25]
[137:14,17] [160:19] [207:
12]
quick [136:4,5]
quit [128:23]
quite [77:6]
quoted [160:21]
quotes [193:15]

R

raising [176:12]
ran [47:23] [200:16,25]
[201:6]
range [22:23]
ranges [16:6]
rare [35:4,8]
rate [21:18] [41:7,9,17]
[45:4] [104:11,20,24]
[169:18,20] [173:24] [174:
4,12,17,22,24] [175:5,8,20]
[176:9,11,13,22] [189:4]
[192:5,10,19,22,25] [193:3
,6,8,10,11,13,17,21] [197:3]
[200:14,16]
rated [198:19]
rates [104:19] [175:25]
[176:18] [193:14] [197:23]
[200:2,25] [201:5]
rather [37:12] [53:16] [84:5]
[93:15] [105:15] [106:2]
[108:7] [115:21] [117:2]
[124:9] [129:3] [133:18]
[137:19] [146:13] [161:14]
rating [14:9] [197:25] [198:4
,12,14,15,22] [199:5,6,11,15
,17] [200:4,21] [207:3]
ratings [14:25] [199:19]
rationalize [58:21]
raw [95:10,20] [97:8,16]
re [75:12]
reach [43:3] [75:24] [195:2]
reached [49:5,9] [68:14]
[145:7,12] [151:10] [193:20]
[201:13] [202:11] [205:3,16]
react [161:18]
reacted [156:11]
read [42:8,10] [55:23,25]
[59:14] [67:3] [75:14]
[78:11,14,15,18,21,22,23,24]
[79:2,4,6,9,12,19,21,22]
[80:3] [103:7] [110:3]
[114:14,15] [130:8] [132:25]
[150:8] [151:8] [166:24]
[178:8] [189:18] [195:17]
[197:16] [198:2] [200:7,25]
[201:18,21,22] [202:24]
[210:]
reader [202:9] [203:15]
reading [80:14] [117:13,14]
[170:5] [195:22]
reads [155:22] [182:21]
real [44:3] [96:10] [106:25]
realize [52:9]
really [10:22] [29:21] [44:22]
[54:24] [65:2] [95:5] [97:17]
[146:10] [150:24] [151:14]
[156:12] [157:11] [176:25]
[184:12] [193:16] [195:3]
[200:23] [201:20] [206:24]
realm [142:2]
reason [64:15,18,24] [109:18]
[121:22,25] [123:20] [124:
9] [134:20] [149:6,9,11]
[172:19] [183:15] [188:23]
reasonable [10:10] [126:4,7
,14,16,17] [132:16] [150:6]
[151:16] [182:22] [189:4]
[197:23] [200:2,25] [201:4]
reasonableness [142:2]
reasonably [136:3]
reasons [57:17] [88:5]
[134:6]
rebut [80:23]
rebuttal [6:6] [79:18,25]
[80:18] [186:6]
rebutting [20:18] [81:15]
recall [11:12] [17:10,14]
[21:21] [22:22] [48:4]
[51:10,11] [54:12] [57:8,18]
[61:3] [63:19,24] [64:11]
[65:21] [73:19] [77:15,18,22]
[78:6,9] [80:6] [145:16,19,20
,23] [148:9] [176:15] [193:7]
receive [43:11]

27/03/2008 PFEFFER, ALLEN M.

received [70:3] [80:20]
 [163:24] [164:13] [178:2,10]
recently [195:4]
recess [51:19] [136:18]
 [168:24]
recognize [53:13] [56:21]
 [76:15]
recognized [9:9] [13:15]
 [27:3] [34:15]
reconcile [91:21]
reconciled [163:25]
record [3:18] [21:2] [51:18,21]
 [52:5,11] [83:13,16,17,20]
 [136:16] [137:6,22] [168:23]
 [169:2] [182:11] [207:16]
 [210:]
recovery [163:24] [164:5,14]
 [165:15,24,25] [166:18]
refer [12:17] [18:5] [57:24]
 [59:17] [66:16] [150:10]
 [155:19] [165:18] [169:5]
 [190:10]
reference [59:9] [62:9]
 [105:13] [110:15] [150:15]
referenced [188:21]
references [62:11]
referred [24:21] [150:10]
 [172:18]
referring [4:16] [6:14,18]
 [59:12] [66:11] [97:16]
 [165:19,21,23] [170:6]
 [172:15] [182:12] [184:14,17]
 [185:12] [186:20] [195:25]
refers [150:13] [184:20]
 [185:13] [187:2] [196:2]
reflect [149:13]
reflected [86:5] [158:14]
 [159:22] [165:15] [171:12]
 [174:11] [175:12] [181:8]
 [204:19]
reflecting [46:9] [181:25]
reflection [161:8,9]
reflects [162:22] [174:4]
 [182:4]
regard [45:16] [68:14]
 [74:8] [81:12] [93:4] [111:10]
 [139:21] [144:11]
regarding [25:8]
regards [203:22]
registered [211:5]
regular [147:15]
rejected [71:11] [117:10]
 [159:24]
relate [20:17] [74:23] [104:17]
 [108:8]
related [5:10,21] [8:5,25]
 [17:5,12] [18:20] [22:5,10,14]
 [23:19] [68:13] [74:25]
 [96:3] [100:6] [107:8,15]
 [162:21] [163:22] [177:10]
 [178:3] [203:5] [211:14]
relates [5:18] [6:6] [7:25]
 [8:3] [12:2,3] [14:9] [16:2]
 [19:12] [21:7,11,16] [23:23]
 [52:18] [53:2] [59:5] [75:2]
 [93:7] [99:12] [103:11]
 [114:4] [120:3] [184:8]
 [200:20]
relating [75:23]
relation [20:23] [21:19]
relationship [20:11] [52:7]
 [55:8,9]
relative [22:24] [47:12,13]
 [50:2,4,7,14] [53:24] [110:
 19] [111:8] [112:12] [134:3]
 [141:12,15] [144:9] [159:18]
 [165:6] [183:3] [185:4]
 [190:21] [194:19] [199:3]
 [206:9]
relevance [133:6] [164:4]
relevant [5:3] [118:15,22,24]
 [119:6] [143:5,8] [163:16]
reliability [133:10] [182:23]
relied [149:21]
remain [169:21]
remaining [169:17]
remains [169:18]
remark [102:12]
remember [63:17] [77:25]
 [121:8] [123:2] [145:24]
 [186:9] [187:20] [194:11,17]
render [5:2] [13:6] [100:3]
rendered [100:8]
rendition [56:9]
reorganization [73:8] [170:
 20]
reorganized [73:13]
repeat [24:17] [38:2,4]
 [55:21] [109:25] [132:23]
 [143:19] [166:22] [178:6]
 [201:16]
repeated [177:20]
rephrase [24:19] [102:9]
 [119:7]
report [5:9,19,22] [6:7]
 [8:6] [9:16] [13:12] [17:17,19
 ,23] [18:2] [19:6,25] [20:19]
 [52:18] [53:3,22,23] [54:24]
 [55:2] [61:24] [62:12]
 [65:25] [68:14] [69:21]
 [70:6] [76:21] [79:14]
 [80:14,18,23] [81:16,19,23]
 [82:8,10,12,15,22] [83:2,6]
 [88:3] [98:11] [101:11]
 [102:6] [103:7] [105:11]
 [109:23] [110:16] [115:6]
 [117:14] [118:2,3,7] [120:23]
 [121:10,11] [124:20] [128:
 9] [146:24] [148:5] [151:9]
 [154:20] [155:13,20] [157:
 2] [162:16,18,21] [163:7,11]
 [165:19] [169:4] [170:18]
 [172:19] [176:2,24] [177:6]
 [181:3,5,24] [182:3] [183:18]
 [184:12,22] [185:8,10,14,19]
 [186:6] [187:3,24] [188:2,6
 ,20] [190:15,20,22] [191:3,4]
 [192:3] [193:6,10,24]
 [194:5,19,21] [195:6,10]
 [197:8] [199:9,10] [202:3,4]
 [205:2,4,8,12,14] [208:9]
reporter [3:24] [61:10]
 [114:13] [211:6]
reports [176:16] [177:3]
reputation [96:4]
reputational [98:3]
request [209:3]
require [114:24]
required [12:11,12] [97:7]
 [179:22]
resolution [84:20,21] [85:9]
 [86:6] [89:17] [103:15]
 [163:18]
resource [75:21]
respect [12:15] [15:25]
 [18:9] [19:9] [45:20] [47:14]
 [52:6,8] [54:25] [56:3]
 [74:4] [76:13] [80:22]
 [150:20]
respected [192:6]
respecting [130:24]
respectively [84:4]
respond [19:14]
response [98:19]
restate [102:10] [143:20]
 [167:3]
restructured [158:2]
restructuring [75:13,17,24]
result [72:12] [85:23] [86:22
 ,24] [89:11] [105:14] [110:16]
 [129:6] [157:7] [160:16,17]
resulted [72:12]
resulting [85:15] [200:19]
results [89:7,8] [129:8]
 [141:21] [172:17] [197:9]
 [200:11]
return [31:21] [175:20]
revenue [16:3]
review [80:17] [181:16]
 [194:3]
reviewed [78:17] [80:9]
 [176:15] [177:3] [201:8]
reviewing [23:12] [85:2]
 [117:12] [123:17] [135:2,14]
 [152:11] [163:8] [181:2,13]
 [182:14] [183:13] [189:9,23]
 [196:8,20]
revised [181:5,21] [196:6,11
 ,13] [197:10] [200:10,11]
 [202:7] [203:21,24]
revising [200:9]
rewrite [163:6]
ridiculousness [192:16]
right [5:11,12] [6:8,16,23]
 [7:2,6] [8:14,15,19,20]
 [10:23] [13:3,15] [14:21]
 [16:21] [20:15] [23:24]
 [24:24,25] [25:9,17,25]
 [26:5,9,15,16,21] [27:9,15
 ,19] [28:2] [29:5,20] [30:16
 ,18] [34:12] [35:15,17]
 [36:7] [37:19] [38:24]
 [39:11,13,22,23] [40:4]
 [41:12] [42:20,24] [43:5,10
 ,11] [53:11,15] [54:4] [55:16]
 [57:20,24] [58:3,6,17]
 [59:6,7] [60:14] [61:5,14,25]
 [62:7] [63:20] [65:6,10]
 [66:2] [71:6,20] [73:16,22]
 [74:23] [75:10] [77:23,24]
 [80:7] [82:3,19] [84:17]
 [85:7,12] [86:17] [87:25]
 [95:4] [98:7] [101:21]
 [105:15,16] [107:18] [108:
 2,3] [109:18] [112:5] [116:16
 ,22] [117:19] [118:3] [120:10
 ,23] [121:9] [123:6,7,8]
 [124:2,7,16,17] [125:23,24]
 [126:12,25] [127:11] [129:
 4,20] [130:6,14,18,22]
 [131:12,13,14,16,19,24]
 [132:3] [134:14] [135:23,25]
 [138:15,21,24,25] [139:7]
 [140:15] [148:12] [149:4]
 [150:22,23,25] [152:10,24]
 [153:12] [155:10] [161:20]
 [162:5] [163:7] [168:6]
 [169:14,19] [170:2,22]
 [171:7] [173:9] [175:3,6]
 [179:6,7,9] [180:6] [182:2,9]
 [185:5,12] [186:19] [188:9
 ,10] [190:8] [191:19] [193:9
 ,22] [195:13] [196:13]
 [198:18] [201:17] [204:19]
righthand [58:3] [59:7]
right-hand [58:3] [59:7]
ring [198:7]
rise [161:2,3,7] [162:18]
risk [174:5] [175:23] [198:20]
robert [182:4]
role [54:24] [61:21,22]
 [99:16] [155:8]
roman [173:10] [177:6]
room [120:14,17] [126:10,13
 ,20]
rough [123:15]
roughly [90:6] [120:21]
 [124:11] [127:6,13,14,15]
 [131:14] [138:6,11,14]
 [139:11]
rule [179:3,15]
run [201:7]

S

s&p [200:21]
sale [45:20] [74:11] [88:21]
 [91:8,15] [94:12] [95:10]
 [97:8] [98:17,24,25] [105:15]
 [108:19,23] [109:21] [110:
 6] [111:15,20] [112:24]
 [113:13] [154:22] [158:11]
 [163:13,19,21] [166:11,12]
 [167:10]
saleable [179:21]
sales [88:4] [95:21] [97:16]
sarah [2:] [3:5]
saw [128:3] [135:4] [148:7,17
 ,22] [149:18] [156:20]
 [157:5,7,9] [177:21,23]
 [186:14] [189:12]
say [4:16] [6:8] [13:16]
 [14:14] [16:20] [17:15]
 [18:4] [21:11] [22:9] [27:7]

27/03/2008 PFEFFER, ALLEN M.

[32:24] [33:17,20] [34:5,21]
 [35:3] [36:4,20] [37:13,16,17]
 [40:6,8,9,16] [41:18] [49:7
 ,11,22] [50:4,7] [52:4]
 [57:4] [59:20] [68:10]
 [87:10] [88:19,23] [89:21]
 [92:3] [95:8] [96:17] [97:14]
 [102:22] [103:12] [105:6,18]
 [107:18] [116:4] [126:19]
 [133:8] [140:10] [142:13,24]
 [143:23] [144:9,12] [145:13]
 [157:5,6,7] [158:16,20]
 [165:25] [166:7] [167:5]
 [170:2] [171:18] [173:10]
 [174:3] [183:8] [184:2]
 [186:5] [188:25] [191:8]
 [194:15] [197:18] [204:25]
saying [47:4] [60:8] [68:21]
 [69:7,13,22,25] [70:7]
 [84:19] [85:12,13] [89:10]
 [96:18] [97:4] [103:5,6]
 [118:18] [147:8] [161:20,22]
 [162:2] [164:10] [177:15]
 [185:9] [186:25] [187:17,23]
 [191:15,16,21] [192:8,14]
 [200:24]
says [59:10] [66:9] [75:12]
 [85:6] [88:10] [98:11]
 [189:24] [190:15,22] [192:
 3] [201:4]
scenario [46:7] [67:22]
 [69:20] [72:5] [159:10]
scenarios [46:9] [47:5]
 [91:23] [92:19] [93:2]
 [106:17,21] [109:12] [143:
 5]
schedules [186:14] [189:5,7]
 [191:6] [192:4,10]
school [100:21,22,23]
science [28:5]
seat [179:13]
second [42:2] [83:13] [91:14]
 [107:22] [122:13] [147:18]
 [155:21] [168:18] [201:21]
secondary [203:5]
secondly [163:21]
section [115:5] [195:6,11]
security [30:25] [132:6,9]
securitization [74:4,9]
securitizations [160:2]
securitized [159:23]
seek [4:23]
seem [161:18] [194:21]
seemed [74:15]
seems [196:9,15]
seen [81:6] [86:8] [148:9,11
 ,15,16] [149:15] [157:23,25]
 [160:3] [171:10] [188:2,5,9]
 [189:13]
selected [17:16,21] [79:11]
sell [10:6] [45:25] [67:17]
 [93:16]
seller [10:2] [154:8]
selling [25:9] [29:4] [164:10]
senior [61:25] [62:5]
sense [10:16] [12:21] [14:8]
 [104:23] [180:4]
sentence [85:4] [155:21]
 [156:4] [160:20] [183:21]
 [184:8,9] [189:18] [190:11]
 [192:2] [200:24] [201:4]
separate [102:4]
separately [6:24]
september [62:8,13] [64:7,12]
 [65:18] [66:20,25] [68:7,15
 ,18,23] [69:9,14,16] [72:16
 ,25] [73:6] [84:22] [85:11]
 [86:2] [88:6,12,15] [95:2,18]
 [101:16,17] [102:15,16]
 [103:13,17] [112:21,23]
 [114:21] [118:11,12,14,15
 ,25] [119:14,15,21,22]
 [120:5,6,19] [121:21]
 [123:22] [124:10,16] [125:
 21,25] [126:2] [129:9]
 [130:25] [131:2] [133:14,17]
 [135:11] [137:16,23] [138:
 17,20] [139:9,10] [140:14]
 [142:7,18] [143:12] [144:2]
 [156:6,24] [159:6] [160:24]
 [162:20] [163:17] [189:4,5
 ,21] [190:8] [193:17] [200:15]
 [205:22] [206:7]
series [137:14]
served [8:18,22] [19:6,25]
 [20:9]
service [19:5] [159:23]
servicer [159:22]
services [19:13]
servicing [160:2]
set [9:12] [15:5] [21:18]
 [37:15] [49:25] [51:6]
 [54:22] [97:20] [114:23]
 [122:18,20] [124:23] [132:
 6,9,17] [147:3] [148:17]
 [149:16] [153:19] [184:15,16]
 [185:5,7,22] [186:21]
 [192:18] [211:18]
sets [134:20] [148:14]
several [37:19] [108:25]
 [163:15]
shapiro [62:8,17] [63:21]
 [64:7,16,18,23,25] [117:22
 ,25] [121:9] [123:23] [128:6]
shapiros [62:11] [63:6]
 [64:12] [90:8] [109:23]
 [118:6] [121:11] [128:4,9]
 [137:18]
share [6:11,15] [25:8,12]
 [26:4] [138:10]
shares [6:10,14] [7:21]
 [16:16] [25:12] [26:5]
 [63:11] [121:3,13] [122:2]
 [123:16,21,22] [138:11]
sheet [31:9] [32:4] [43:25]
shes [61:25] [62:3]
short [45:12] [51:16] [66:5]
shortcircuit [66:5]
short-circuit [66:5]
shorten [82:4]
shorthand [28:10]
shouldnt [149:21]
show [56:14] [84:3] [120:5,6]
 [121:10] [123:9] [127:5]
 [137:20] [140:6] [160:23]
 [165:6] [176:24] [204:11]
showed [90:16] [155:23]
 [156:17]
showing [121:12,20] [181:8]
shown [84:2] [118:21]
 [133:14] [135:10] [137:22]
 [162:16] [166:20] [197:21]
 [199:24]
shows [109:23] [121:9]
 [123:23] [125:20] [131:22,23]
 [133:16] [135:3,9] [162:17]
 [165:8] [182:25] [183:9,22]
 [190:7,9]
shut [156:5] [157:3]
side [181:15]
sign [17:25]
signed [210:13]
significance [155:25] [156:
 3] [161:13]
significant [140:9] [155:23]
 [156:3] [164:7] [178:23]
significantly [197:20] [199:
 23]
similar [15:22] [16:8] [106:21]
 [205:4]
similarity [172:10]
simple [91:19] [109:7]
simpler [195:23]
simplified [12:14]
simplistic [175:15]
simply [37:12] [95:10]
 [102:2] [130:23] [146:13]
 [190:22] [203:20] [204:10,11]
single [12:7] [84:14] [199:17]
sir [11:9] [17:15] [21:4]
 [45:3] [56:14,22] [60:8]
 [69:9] [71:15] [72:7] [73:11]
 [75:11] [78:12] [79:10]
 [81:19] [82:12,21] [84:14]
 [88:10] [89:5] [91:5] [100:4
 ,15] [101:13] [105:12,25]
 [110:5,12] [114:5] [116:23]
 [122:15] [124:8] [125:12]
 [129:4] [130:6] [133:13]
 [134:24] [142:5] [143:10]
 [154:3] [155:7] [156:2]
 [160:4] [161:2] [162:15]
 [163:10] [166:17] [167:18]
 [169:4] [171:17] [180:25]
 [183:8] [185:21] [192:2,8]
 [194:11] [198:2,12] [201:9]
 [203:13] [206:24]
sit [82:21] [83:6] [86:21]
 [109:19] [110:5] [140:24]
 [146:6] [150:2] [167:18]
 [168:7] [177:24] [185:21]
 [190:6]
sitting [11:12] [61:3] [71:10]
 [77:25] [78:5,9] [82:5]
 [84:10] [120:10] [141:3]
 [147:5] [184:24] [185:3,9]
 [186:9] [206:5,12]
situation [35:24] [44:7]
 [49:19] [144:17] [156:23]
 [159:8]
situations [10:24] [42:14]
 [116:6]
six [188:2,6]
slaps [192:19]
slightly [130:5]
sloppy [203:22]
small [7:14]
smaller [87:13,17,18] [171:
 4,12]
sold [26:3] [28:23] [29:2,3,6]
 [67:24] [73:10,11,13,15,18
 ,20,23] [74:3] [93:18] [98:9]
 [106:25] [157:23] [158:3,8]
solvency [11:13,21,24]
 [12:2,3,6,8,16,18,21]
 [14:7] [24:8] [118:7] [202:4]
solvent [10:15,25] [27:21]
somebody [60:15,21] [61:25]
 [86:9]
somehow [104:5]
someone [44:16] [58:13]
something [4:13] [15:2]
 [28:4] [30:10,11] [32:14]
 [36:25] [37:3] [58:13,14,16]
 [59:11] [60:20,22,25]
 [94:17] [98:13] [100:12]
 [156:25] [179:14] [182:4]
 [187:16] [203:11]
sometimes [16:10] [42:3]
 [179:13]
somewhat [73:13] [133:5]
 [203:22]
somewhere [8:22] [145:24]
 [200:18,20]
sorry [24:15] [26:13] [32:7]
 [40:7] [50:6] [61:17] [68:4]
 [77:8] [83:11] [110:2]
 [115:14] [121:14] [123:4]
 [129:21] [132:23] [142:23]
 [143:16] [170:6] [178:7]
 [182:13] [194:7] [201:20]
 [202:25]
sort [149:19]
source [183:19] [185:2]
sources [186:11] [193:14]
speak [63:3] [75:12] [79:15]
 [123:10]
speaking [3:5] [21:4] [35:14]
 [36:2,11] [38:7] [42:21]
 [53:4] [62:17] [64:7] [101:10]
 [153:9] [154:17] [169:15]
 [175:24]
speaks [34:6]
specific [6:11] [7:8] [8:8]
 [10:22] [26:20] [28:19]
 [59:22] [65:15] [99:10]
 [155:5,9]
specifically [63:3,4] [64:11]
 [81:6] [114:17] [155:16]
specificity [99:18]
speculative [151:7] [192:20]
 [206:15]
speech [101:19,23]
spell [61:9]

27/03/2008 PFEFFER, ALLEN M.

spend [46:5]
spit [199:13]
ss [211:4]
stable [45:18]
staff [51:6] [61:18] [181:5]
stakeholders [95:24] [96:24] [97:21] [179:5]
stamped [122:24] [182:13] [208:10,,13,,]
stamps [134:20]
stand [83:5] [84:14] [170:19]
standalone [170:19]
stand-alone [170:19]
standard [14:25] [29:21] [30:2] [45:2,7] [46:16]
standing [31:5]
standish [72:21]
stands [203:12]
stars [2:5]
start [90:6,14] [93:23] [120:19]
starting [36:21] [90:9]
starts [36:3] [115:19] [123:4] [195:6] [196:5]
state [45:18] [98:6] [143:6] [157:10] [210:] [211:7]
stated [72:21] [111:8] [146:24]
statement [48:22] [94:24] [127:23] [144:14] [161:12] [188:4] [199:3,9,10,21] [200:5,11]
statements [23:21] [114:20] [120:17] [126:21] [146:16] [207:2]
states [3:15]
stenographically [211:12]
step [38:20] [39:15] [43:12] [98:7,20]
steps [24:10] [28:3,11] [35:10] [38:22] [46:20] [47:25] [58:11,21,24] [92:6] [94:4] [105:24]
stick [103:10] [146:18] [150:11,14]
stock [15:15] [22:10] [24:13,23] [25:9] [26:3] [27:12] [29:4] [32:12] [62:20] [63:8] [84:2] [89:23] [115:10,24] [120:21] [126:24] [129:5] [130:17,24] [131:11] [133:16,18] [134:7] [135:9] [137:15] [138:19] [139:2,8] [178:17,22] [180:5]
stockholders [25:16] [179:9,16]
stood [31:25] [83:24]
stopped [158:19]
story [141:12]
strategic [155:2]
strictly [101:10]
strike [13:5] [26:14] [37:4] [81:17] [182:18]
string [125:14] [180:21] [208:]
strong [197:25] [198:11,13,22] [199:4,11,14] [200:4] [207:3]
structure [134:5]
studied [41:21] [46:12] [76:24] [97:5,7] [168:13]
studies [7:20] [47:24] [55:17] [56:8] [62:25] [63:5,15] [64:6] [80:10] [89:9] [140:6] [176:3]
study [5:7,9] [18:20] [39:14] [41:25] [42:4] [46:11,13] [51:8,24] [53:17] [70:9] [89:4,23] [113:8] [140:18] [141:7] [144:24] [167:10] [173:18] [189:21] [190:10] [196:24]
studying [24:21] [116:19]
stutman [2:4] [3:19]
subject [22:17] [23:8,18] [28:15] [29:10] [30:12,16,19] [32:20] [71:14] [127:11,16,21] [128:2,5] [145:10,12] [151:11] [196:17]
subjects [9:4] [76:20]
subscribed [210:13]
subsequent [112:18,19,24] [113:22]
substantially [165:13]
subtract [113:10]
sufficient [10:3] [59:11,15,20,21] [60:2,4,9,18,19] [119:10,19] [123:14,18] [161:23]
sufficiently [116:17]
suggest [104:4]
suggestion [206:17]
suggests [158:17]
suisse [2:9] [3:14,22] [129:19] [130:16] [133:15] [148:19] [171:9] [172:11] [177:8,9,25] [178:9] [198:16,19] [199:6]
suisses [99:16] [124:25]
suite [3:6]
sum [27:21] [129:8] [130:5,19] [131:7,8,18]
summarized [84:24] [191:10]
summarizing [85:3]
supplemental [109:23] [118:3,6]
support [65:25] [76:12] [162:2] [193:25] [194:5]
suppose [108:11] [191:6,8]
sure [10:21] [19:10] [28:9] [29:13] [30:21] [37:6,21] [44:22,25] [60:17] [61:11] [63:4,18] [66:22] [84:10] [90:21] [96:12] [97:17] [98:21] [104:19] [105:22] [106:8] [120:13,17] [128:19] [137:21] [144:15] [152:12] [160:11] [171:24] [182:17] [184:9,13] [185:3,11] [187:7] [188:4] [198:18] [201:17]
surrounding [91:25]
suspended [157:3]
swear [3:25] [4:3] [137:9] [211:10]
synergies [44:11,19]

T

table [179:13]
tables [197:22] [199:25]
taken [51:19] [57:22] [58:25] [85:24] [136:18] [163:12,14] [168:24] [210:] [211:8,12]
taking [107:20] [117:2]
talk [34:13] [43:8] [76:25] [77:19] [78:3,7] [115:22] [140:2] [142:14] [164:13] [205:7,9,14]
talked [115:25] [127:23]
talking [6:9] [7:6] [18:9] [32:20] [33:24] [35:15,17] [43:9] [78:6,10] [89:22] [90:3,4] [96:23] [115:8,16,19] [164:12,16] [165:17] [185:5,7] [205:8]
talks [115:6]
tape [83:16,19] [136:16] [137:5]
taught [101:5]
tax [175:17,18]
team [18:6,9,19] [21:14] [48:4] [51:24] [52:15] [53:16] [61:2,4,5,8,16] [62:4] [77:4,13,16,19] [79:6] [82:18]
technical [38:25] [191:9]
technique [85:13]
telephone [57:7,8,10]
tell [30:2] [41:3] [50:8] [52:24] [58:19] [70:14] [92:6] [101:10] [106:13] [107:24] [113:11] [117:16,17] [125:20] [187:10] [195:11,18] [196:6] [206:12]
telling [60:16] [94:23] [102:2] [111:6]
tells [74:17,21] [190:11]
temporal [20:5] [52:6]
ten [140:12]
tennenbaum [5:10] [6:21] [7:25] [9:19] [13:12] [16:22] [21:8,12] [53:4,14] [54:25] [66:17] [69:8] [71:7] [76:13] [80:18,23] [85:7] [86:2,25] [88:10,14] [92:4] [94:23] [95:8] [97:7] [98:14,22] [104:4] [105:6,18] [111:8] [116:24] [118:9] [119:9] [142:12,14] [144:20,23] [145:22] [146:13,17] [147:4,19,20] [148:18] [149:3] [150:4,8,21] [156:4] [158:16] [161:14,22] [163:12] [164:2] [166:13,16] [167:6,24] [173:2,10] [176:2] [177:7] [180:9] [183:10,18] [184:10] [185:24] [186:7,21] [188:19] [189:20] [191:17] [192:7] [193:24] [194:4,13] [196:2] [197:7,13] [200:17] [201:12] [202:11] [205:15] [206:17]
tennenbaums [5:18,22] [6:6] [8:6] [9:16] [19:5,25] [20:18] [21:14] [52:18] [53:3] [66:11,24] [68:13] [69:21] [76:18] [79:17,25] [80:14] [81:16] [84:18] [85:18] [87:22] [88:9] [89:8,11] [95:16] [99:20] [101:11,14] [102:13] [141:6,15] [146:4] [156:25] [166:20] [169:6] [172:16] [176:11] [183:17,22] [184:21] [186:10] [191:21] [192:9] [196:10] [201:11] [202:3,17] [203:20] [204:4,21] [205:20] [206:6]
term [9:21] [12:21] [25:2] [45:12,14] [47:2] [48:12,14] [76:3,5] [132:14] [178:11] [183:16,17] [195:24]
terminal [42:3,14,15,19] [45:22]
terminologies [4:20]
terms [19:3] [21:13] [22:17] [23:8,18] [28:5] [30:21] [40:18,21] [41:11] [44:7] [50:14] [86:16] [92:13] [95:23] [96:21] [100:11] [110:13] [134:5]
test [12:3] [179:25]
testified [4:4] [137:10] [157:14]
testify [19:17,20] [204:3] [207:5,6]
testifying [186:18]
testimony [57:20] [68:6] [69:17,18] [71:6,8] [73:3,6] [78:14] [87:23] [91:5] [116:2] [188:12] [202:10] [204:21] [205:2] [210:] [211:11,12]
tests [11:25] [12:15,17]
text [82:16] [164:15]
thank [83:21] [84:13] [137:7] [188:23]
thanks [162:13]
thats [5:13] [7:11] [8:20] [9:8] [10:7,13] [13:13] [15:10,13,14] [16:21] [17:2] [19:17] [24:25] [25:10,14,25] [26:6,10,16] [27:18] [30:14] [32:16] [37:14] [38:25] [39:2,3,13] [43:7] [48:7] [55:12] [59:7,24] [62:24] [64:23] [67:12] [71:20] [74:13] [82:20] [84:15] [88:16,18] [89:18,20] [96:12] [97:2] [98:11,12,25] [102:18,22] [105:9] [106:10,14] [108:9] [110:11] [111:24] [115:6,23] [117:5] [118:7] [122:6,8] [123:6,8,23] [124:17] [128:17] [129:12] [131:20] [141:2] [144:18]

27/03/2008 PFEFFER, ALLEN M.

[145:3] [146:2] [150:12,17]
 [153:2] [168:2] [174:8,14]
 [175:21] [179:10,25] [180:
 9] [182:7,13,18] [190:9]
 [191:23] [192:10] [193:12]
 [200:4,23] [206:24]
themselves [3:17] [194:18]
theoretically [160:7]
theory [34:2] [67:3]
thereby [30:15]
therefore [31:14] [57:17]
 [68:19] [69:7] [70:21]
 [85:8] [114:25] [159:10]
 [162:3] [186:11] [188:3]
 [201:12]
thereof [78:12] [98:2]
theres [7:13] [10:12] [11:25]
 [12:3] [16:13] [36:16]
 [42:18] [44:2,4,5,13] [70:12]
 [75:3,4] [83:25] [99:12,13,17]
 [102:3,5] [108:2] [133:5]
 [134:11] [139:15,16] [142:
 2] [148:14] [154:25] [158:24]
 [164:7] [174:2] [175:14]
 [179:12] [193:10,11]
theyd [17:25]
theyre [15:23] [57:9] [75:22]
 [126:23] [146:22] [147:12,14]
 [152:5] [187:22]
thing [14:24] [18:23] [111:24]
 [124:19] [132:11] [143:9]
 [202:2] [206:24]
things [13:13] [14:11] [17:2]
 [30:22] [31:2] [41:23]
 [44:6,18,19,24] [45:3]
 [50:12] [68:5] [80:11]
 [82:4] [93:19] [95:12,13]
 [103:6,8] [108:13] [113:21]
 [119:17] [127:4] [134:4]
 [140:17] [141:9] [148:2]
 [151:6] [156:9] [165:18]
 [174:4] [187:5] [194:20]
 [206:2]
think [9:8,19] [19:17,19]
 [28:6] [52:13] [54:6] [63:17]
 [84:8] [88:24] [89:12,25]
 [90:7] [100:13,14] [101:25]
 [104:15] [106:24] [108:25]
 [111:22] [112:15] [113:2]
 [114:7] [115:2] [118:7,13,15]
 [122:11] [124:14] [126:9]
 [128:6,10] [136:9,11]
 [137:17] [138:8] [139:16]
 [140:4,16] [141:5,19]
 [142:2,25] [143:7,13]
 [144:22] [146:16] [151:4,8]
 [152:21] [154:7,9,10]
 [155:16] [161:22] [162:7]
 [163:14,24] [174:14,16,17]
 [177:3] [179:19] [181:10]
 [182:18] [183:17] [186:23]
 [198:19] [199:2,5,8]
thinks [88:16] [158:18]
 [161:16]
third [23:21] [59:9] [134:25]
though [11:20] [77:23]

[91:5] [92:2] [108:2] [117:22]
 [122:3] [150:2] [180:4,13]
thought [92:12,16] [93:24,25]
 [106:5] [143:17,22] [146:4]
 [186:15] [193:2] [203:18]
 [205:10]
three [11:25] [17:20] [26:10]
 [12] [36:21,23] [37:6,17]
 [63:25] [131:7] [133:17]
 [135:5,19] [162:15] [204:24]
throughout [73:25]
time [3:8] [5:17] [9:18]
 [10:10] [17:5] [19:19]
 [21:4,17] [23:24] [24:8]
 [33:4] [45:16,25] [46:2]
 [47:7] [48:10,23,24] [49:12]
 [14] [51:17,20,23,25] [52:2]
 [14] [53:18] [55:3,15] [56:10]
 [57:22] [60:15] [61:7]
 [73:4] [83:15,18] [92:12]
 [93:25] [94:3] [97:2] [98:8]
 [99:5,9] [107:15] [108:9]
 [131:4] [136:8,15] [137:3,4]
 [143:23] [147:3] [148:13]
 [149:12] [155:3,16,17]
 [160:11] [161:4] [168:21,22]
 [25] [174:4] [177:11] [178:4]
 [187:4,11] [189:16] [198:16]
 [201:9] [204:2] [207:14,17]
times [8:21,23] [9:8] [10:20]
 [11:16] [20:6] [22:23]
 [39:9,11] [48:15] [53:25]
 [61:18] [74:2] [99:9] [108:25]
 [114:8] [138:10] [174:17]
 [204:24]
timing [19:2]
titled [195:7]
today [3:8] [11:12] [37:17]
 [39:22] [40:2,4,17,21]
 [41:11,18,19] [71:16]
 [72:2,5,6] [77:25] [78:5,9]
 [79:15] [82:21] [83:7,25]
 [84:10] [86:21] [109:19]
 [110:5] [115:9] [116:2]
 [123:16] [136:8] [140:24]
 [141:3] [146:6] [147:5]
 [150:3] [167:18] [168:8]
 [177:24] [184:24] [185:3,10]
 [22] [186:9,18] [190:6]
 [205:7] [206:5,12,25]
today's [40:17,21] [41:11]
together [172:12]
told [17:23,25] [24:14]
 [28:8] [54:2] [58:13] [59:3]
 [101:7] [106:14] [111:5,24]
 [25] [112:10] [124:14]
 [126:9] [177:20] [193:2,5]
 [205:11]
tonight [136:6]
tony [2:] [3:19] [18:25]
 [33:25] [51:12] [52:3]
 [128:20] [129:22] [168:15]
 [188:19]
took [57:2,6] [58:11] [108:12]
 [192:8]
top [65:21] [188:24] [190:11]

topic [78:23] [98:23] [118:4]
 [5,6] [154:23]
topics [79:3]
total [7:8] [25:12] [26:4]
 [27:12] [32:11,12,21]
 [33:19,21] [63:11,21]
 [89:23,24] [96:24] [115:10]
 [129:20] [131:7] [135:5,11]
 [138:13] [164:22,24]
totality [80:8] [81:6] [89:20]
toward [17:8] [56:9] [75:11]
towards [144:8] [147:19]
 [165:13]
trade [134:7] [165:14] [166:
 8,12] [178:24]
traded [15:24,25] [164:9]
 [165:10]
trades [180:5]
trading [26:25] [27:6] [65:11]
 [126:2] [132:16,17] [139:17]
 [18,19]
transaction [29:2]
transactions [14:2] [28:22]
 [177:10] [178:3]
transcribed [211:13]
transcript [210:]
treasurer [49:24] [50:13]
treister [2:4] [3:20]
trend [155:24] [161:14]
tried [95:19]
true [10:7] [14:24] [17:21]
 [32:22,25] [33:22] [72:23]
 [82:25] [84:8] [88:12]
 [94:5] [99:2] [110:17]
 [135:6] [141:7,24] [148:20]
 [150:6] [157:20] [160:6]
 [161:4] [162:20] [172:4]
 [176:13,20] [177:17,25]
 [186:3] [189:21,24] [190:13]
 [201:14] [202:13,15] [204:
 5,22] [206:21] [207:7]
 [210:8]
trust [3:14] [82:9]
try [61:11] [129:3] [136:6]
trying [29:21] [30:3,20]
 [41:6] [104:13] [115:18]
 [155:12] [186:5]
turn [59:6] [177:5] [182:20,21]
 [195:5]
turned [48:20]
turning [45:13] [115:5]
 [169:4] [170:2,12]
two-page [180:21]
two-page [180:21]
types [202:8]
typically [29:18] [35:8]
 [42:12] [115:4] [152:14,18]
 [161:9] [174:10,20] [179:11]

U
u.s [84:8,9]
ultimate [88:4] [89:17]
 [163:18] [165:23] [173:5]
ultimately [88:21] [96:21]
 [164:13] [165:14] [167:20]

[168:2]
unable [65:5]
unadjusted [135:17]
unclear [186:10] [187:6]
underlay [172:3]
underlying [170:8]
understand [5:4] [9:16]
 [11:9] [13:11] [16:6] [18:13]
 [17] [55:3] [69:21,25] [70:6]
 [80:25] [91:20,24] [100:17]
 [102:13] [103:22] [105:5]
 [150:2] [179:3] [182:3]
 [183:19]
understanding [57:14]
 [91:10] [92:12] [93:24]
 [114:10,11] [147:6] [173:14]
 [185:20]
understood [24:3] [114:8,9]
 [187:8,9]
undertaken [94:5]
underthehammer [158:12]
under-the-hammer [158:12]
unduly [204:4]
unfair [107:4]
unfortunately [56:25] [57:4]
 [16] [122:9]
united [3:15] [71:16,19]
unknown [147:4]
unrealistic [149:7] [150:15]
unreasonable [192:20]
unreasonably [202:12,13]
 [203:16,17] [205:16]
unsecured [165:22]
until [17:17] [18:2] [42:16]
 [98:23]
upon [29:8] [32:3] [51:8]
 [62:14,22] [69:4] [80:8]
 [81:5] [85:9] [101:14]
 [102:14,19] [105:18] [126:
 13] [127:23] [146:12] [149:
 21] [185:21] [188:6] [204:3]
upside [46:8]
uptick [162:22]
upwards [192:4]
us [76:3] [82:6] [187:6]
 [190:11] [202:2]
use [12:24] [14:19,23]
 [15:3] [25:3] [27:19] [34:21]
 [38:15] [48:12,14] [57:25]
 [78:21] [109:2,6,7,9] [115:
 18] [126:4,13,16] [134:21]
 [137:22] [138:6] [141:11]
 [149:17] [169:6] [178:24]
 [186:17] [195:24] [199:12]
 [205:5]
used [15:8] [16:22] [34:18]
 [116:24] [127:5] [128:6]
 [137:18] [138:3] [145:21]
 [146:20] [148:15,18] [149:
 2] [150:5] [152:2] [169:9,12]
 [178:15] [180:7,9] [183:10]
 [185:16,18,24] [186:16,21]
 [187:3] [193:25] [194:13]
uses [192:18]
using [31:3,13,14,16] [32:10]
 [47:17] [58:2] [100:13]

27/03/2008 PFEFFER, ALLEN M.

[121:12,24] [138:17] [144:24]
[146:13,17,19,21] [147:9,23]
[149:17] [150:17] [152:19]
[183:23] [184:10] [192:5]
[196:11] [197:23] [200:2]

utility [178:16]

utilize [116:18] [143:14]

utilized [179:2]

utilizing [104:10]

V

vacuum [164:3]

validity [180:13]

valuing [33:8]

valuation [4:9,11,12,20]

[5:2] [8:24,25] [9:4] [10:13]

[13:17] [24:11] [28:12,14]

[29:6,8,13] [30:3,8,9]

[31:3] [32:10] [35:11]

[37:16,23] [38:7,20] [40:2,14]

[19] [41:3,6] [42:22] [44:17]

[24] [69:19] [70:18] [75:3]

[85:13] [91:11] [100:2]

[101:12] [111:14] [112:6]

[116:9,15] [124:10] [132:20]

[133:9] [137:18,22] [149:12]

[150:5,13] [164:3] [173:16]

[174:11] [178:17] [180:3]

[189:5] [192:6]

value [4:14,16,17,21,22,23]

[5:4] [6:2,3,4,5,9,13,17,18]

[20,25] [7:3,4,7,9,16,20,21]

[25] [8:4,12] [9:18,21]

[10:17] [11:2,4,5,17,19]

[12:10,18,24,25] [13:7,18,24]

[14:12,16] [15:11,15,16]

[16:16,17] [24:4,6,22,23]

[25:15] [26:2,18,20] [27:8,12]

[14,23] [30:15] [31:4,7]

[32:2,11,13,14,19,21]

[33:13,15,18] [34:3,6,7,14]

[36:5] [39:16,21] [40:18,21]

[42:2,3,14,15,19,21] [43:8]

[9,14] [45:23] [51:24] [52:15]

[16,25] [53:5,9,17] [55:4,15]

[18] [56:9] [62:8,12,14,20,21]

[63:22] [64:8] [70:4] [71:16]

[72:2,6,9] [84:20,21] [85:9]

[15] [86:6,7] [88:7,15]

[89:23] [90:17] [91:12]

[93:4,5,7] [95:23] [96:19,21]

[25] [97:19,20] [98:24]

[99:5,23] [101:15,16]

[102:14,15,23,25] [104:6]

[107:7] [108:20] [111:12,17]

[22,23] [112:11,12,20,22]

[113:6,24] [115:10,24]

[116:25] [119:15,20,21]

[121:12,20] [127:16,21]

[129:20] [130:17,23] [131:

3,22] [132:5,9] [133:11,25]

[135:3,9,16] [137:24]

[138:19] [139:2,8,17,18,19]

[141:17] [142:7,17,19]

[143:8,11,25] [152:15,20,22]

[153:2,6,11,12,14,22] [154:

4,11] [159:12,15] [160:9,17]

[162:19] [166:19] [167:8]

[169:25] [173:4,6] [174:4]

[176:23] [178:15] [179:21]

[183:5,6,7] [189:2,19]

[190:2,12,21,25] [191:5,13]

[15,18] [192:12,23,24]

[200:18] [203:19] [204:18]

[205:21] [206:3,7,10]

valued [40:17] [69:15]

[70:24] [175:21]

values [4:25] [5:15,20,24]

[6:22] [7:14] [8:8,9] [14:6]

[16:20] [28:23] [53:21,24]

[89:15,21,24] [90:4] [92:17]

[124:11] [158:11,12,14]

[169:14,19] [192:3] [201:13]

[202:11] [204:4,21] [205:16]

[206:20] [207:3,9]

valuing [16:9] [32:24] [35:5]

[36:7,8] [114:11] [178:17]

variables [178:25]

variety [57:17]

various [6:5] [8:4] [9:15]

[13:25] [14:20] [16:7]

[23:22] [34:18] [45:19,24]

[46:5,8,9] [47:5,7] [49:11,12]

[53:10,25] [61:23] [64:13]

[72:10] [88:5] [92:19]

[93:2] [104:12] [109:6,7,12]

[126:21] [140:2,16] [141:4]

[155:3] [175:14] [202:6]

vary [12:5]

vast [190:24]

ventura [3:6]

veracity [204:15]

version [181:21]

versus [3:14] [38:16] [39:9]

[64:14] [96:20] [98:6]

vertically [92:21]

vice [61:22]

video [3:4]

videographer [2:] [3:4,23]

[51:17,20] [83:15,18]

[136:15] [137:4] [168:22,25]

[207:14]

videotaped [3:12]

view [20:11] [99:8] [106:17]

[163:17] [175:16] [192:6]

viewed [160:23]

viewing [202:4]

views [54:25] [134:3]

vitti [61:17]

volatility [195:7]

volume [60:7]

W

want [18:3,5] [19:10] [28:10]

[82:2] [104:17] [106:14]

[121:11,16] [129:4] [133:21]

[134:15] [136:5] [137:21]

[138:4] [151:13] [182:15,17]

[188:4]

wanted [27:19] [201:10,12,25]

[207:6]

wants [207:5]

warren [61:17]

wasnt [17:25] [53:15] [65:2]

[70:10] [73:15,18] [78:24]

[86:20] [111:24] [141:14]

[188:13]

waterfall [159:25]

ways [19:15] [104:12] [145:

17] [163:15] [175:14] [202:

6]

weeks [17:20] [133:17]

[135:5,19]

weighted [40:24] [41:2,5]

[174:24] [175:4,9]

well [11:18,19] [19:14]

[31:2] [40:23] [43:18]

[45:2] [53:4] [54:14] [61:12]

[66:2,4] [67:16] [68:11]

[79:17] [88:10,24] [89:5,21]

[98:19] [99:21] [105:6,24]

[107:9,19] [111:2] [113:4]

[114:2] [115:14,20] [119:18]

[123:2,24] [126:15] [128:2

,6,8] [130:4] [134:9] [142:13

,25] [146:6] [149:24] [154:11]

[158:22] [164:7] [165:6]

[166:17] [170:25] [174:23]

[183:15,21] [184:16] [185:

17,21] [187:10] [188:5]

[191:6] [197:17] [202:20]

[205:20]

wellestablished [115:20]

well-established [115:20]

went [65:9] [94:20] [131:8,10]

[148:2] [150:23] [158:17]

[165:12] [170:3] [205:25]

[206:13]

werent [17:16] [79:3] [145:4

,8] [185:17]

weve [52:5] [81:19] [98:23]

[115:9] [136:11] [179:19]

whatever [29:8] [30:7]

[97:22] [98:3] [113:7,9]

[127:22] [138:4] [172:2]

whats [11:24] [25:2] [36:23]

[85:5] [87:25] [124:5,6]

[144:11] [172:6] [197:3,5]

[198:24] [200:14]

whatsoever [110:21] [111:2]

whereof [211:18]

whereupon [3:2] [136:17]

whether [5:21] [10:15,16,17

,25] [27:20] [32:21] [43:14]

[44:8,10,11,12] [47:6]

[57:10] [64:11] [71:11]

[72:15] [86:22] [87:12]

[90:12,24] [91:2] [97:23]

[99:7] [104:14,21] [107:9]

[145:8] [146:7,22] [147:12]

[150:4,21,22,25] [151:15,21]

[152:5] [166:10] [167:18]

[168:8] [172:8] [177:13,16

,21,23,25] [186:15,19]

[194:12] [197:19] [199:22]

[206:10]

whole [14:16] [29:3] [101:19]

[102:11] [125:2]

why [37:5] [55:12] [71:20]

[86:19] [119:24] [122:6,12]

[133:21] [134:6,12] [205:6

,9]

will [3:17,23] [20:13,25]

[31:9] [42:16] [72:8] [102:10]

[103:7,9] [124:23] [125:19]

[128:23] [162:9] [173:21]

[190:19]

williamson [2:] [3:21] [7:10

,23] [9:7] [10:11] [11:6,22]

[13:9,21] [14:22] [16:24]

[17:22] [18:11,14,24]

[20:3,7,16] [21:20,24]

[22:6,12,16] [23:5,17]

[24:16] [25:5,18] [26:22]

[27:16] [28:25] [29:12]

[30:13] [31:10] [32:5,15,23]

[33:2,10,23] [34:9,23,25]

[35:6,13] [36:13,24] [37:2,20]

[38:9,21] [39:12,18] [40:5,22]

[41:13] [42:5,7,11,25]

[43:6] [44:21] [45:10]

[46:14] [48:2,11,18] [49:15]

27/03/2008 PFEFFER, ALLEN M.

[178:5,19] [179:24] [183:12]
 [184:5,19] [186:4,23]
 [187:14] [188:18] [189:22]
 [191:20] [192:13] [193:4,19]
 [194:16,25] [195:21] [196:
 3,19] [197:6,15] [198:6,17,21
 ,23] [199:7] [200:6] [201:3,15
 ,19,23] [202:14,21,25]
 [203:4,8] [204:6,23] [205:18]
 [206:22] [207:8,13]
willing [9:25] [10:2] [152:23]
 [154:8]
windows [181:8]
wish [127:22] [205:14]
within [4:19,20] [13:16]
 [15:22] [16:7] [27:4] [34:15]
 [45:2] [82:18] [194:4]
 [211:6]
without [107:4,23] [139:20]
 [146:20] [147:15]
witness [2:] [3:25] [8:18,22]
 [17:16] [19:11,23] [20:13,23]
 [21:25] [23:6] [24:15,17]
 [38:2] [42:8] [52:22] [55:13
 ,21] [56:12] [85:2] [109:25]
 [114:14] [117:12] [123:17]
 [132:23] [135:2,14] [152:11]
 [157:18] [163:8] [166:22]
 [170:5] [178:6] [181:13]
 [182:14] [183:13] [189:9,23]
 [195:22] [196:8,20] [201:20]
 [202:22] [208:4] [211:10,18]
wont [134:17]
woodland [3:6]
word [38:16] [150:13]
worded [167:13]
words [84:6] [115:20] [145:
 20] [199:21] [202:18]
work [14:14] [20:18] [21:6,8
 ,12,22] [22:8,14,21] [23:9]
 [24:2] [43:13,16] [52:8]
 [65:22,23] [125:8] [148:3]
 [150:5] [154:12] [155:6]
 [157:18] [176:18] [204:13,19]
working [46:4] [123:15]
 [126:5]
works [179:17]
world [198:16]
worry [103:9]
worse [168:9]
worth [4:13] [14:9] [26:9,12]
 [27:7] [40:4,21] [41:11,19]
 [92:16,17] [103:20] [133:16]
wouldnt [15:18] [35:4]
 [37:5] [38:12] [104:17]
 [107:2] [112:7,18] [205:10]
wrap [136:8]
write [60:22] [81:17] [82:11]
 [205:12]
writing [60:16] [82:16]
 [145:13,20,24]
written [53:21,22] [57:15]
 [82:23] [88:3] [101:2]
 [170:18] [172:2,6] [186:6]
wrong [108:4] [129:14]
 [206:15]

wrote [58:15,20] [60:18]
 [105:10] [145:23] [176:25]
 [185:4]

Y

yeah [25:23] [38:17] [79:16]
 [128:2] [198:25]
year [22:25] [23:2] [39:20,25]
 [40:2,3,17,20] [41:10,18]
 [54:3,7,9,11,13] [92:10]
 [133:18] [172:23]
years [36:21,23] [37:6,17,19]
 [75:9] [107:6] [108:10]
 [112:23] [182:24]
yes [4:10] [5:23] [7:11]
 [9:11,23] [10:7] [11:23]
 [13:10,14,19] [16:12,18]
 [17:3] [22:19,20] [25:14]
 [26:17,23] [27:2,5] [29:24]
 [30:6] [33:5] [34:17,20]
 [35:2] [38:22] [39:6,19]
 [43:2] [48:13] [49:7] [52:19]
 [54:18] [57:23] [58:5]
 [59:13,19] [60:13] [62:18]
 [64:23] [65:13,17,19]
 [66:14] [67:4,13] [70:7,20]
 [72:18] [74:13] [75:15]
 [76:6] [78:13] [79:23]
 [81:22,24] [82:10,24]
 [83:3,8] [84:16] [86:14,16]
 [87:9,15,24] [90:2,5] [94:9]
 [102:18] [104:9,10] [105:10]
 [106:15] [116:3,8,21]
 [118:4,7] [119:12] [120:24]
 [121:2] [125:22] [126:3]
 [127:20] [130:10,12] [132:
 10,13] [133:12,23] [135:8]
 [138:12,16] [142:12] [143:
 20] [152:3] [153:3,10,11,14]
 [157:16] [158:4] [162:23,24]
 [163:9] [164:18] [166:5]
 [168:17] [169:15,17,18]
 [170:14,25] [173:15] [178:
 13,20] [179:18,25] [180:8,11]
 [182:10] [188:16] [193:21]
 [196:4,15] [198:14] [201:6]
 [202:19,23] [203:13,14]
yesterday [124:25]
yet [53:16] [56:18] [183:18]
yield [24:3] [86:24] [94:8]
yielded [106:23] [138:13]
yields [131:19]
york [2:] [3:11] [84:5] [210:4]
 [211:7]
youd [27:13] [30:23,24]
 [40:10] [44:10,11,12]
 [46:16,24] [47:8,10,11,16]
 [90:15] [91:19,24] [104:10
 ,16] [115:4] [159:6,7,8]
 [176:24] [192:11]
youll [129:9]
youre [7:6] [10:21] [11:2]
 [16:9] [19:24] [20:19]
 [29:15] [31:11,13,14,16]
 [32:20,24] [33:7,11] [34:11
 ,22] [39:7] [40:13] [44:25]
 [51:21] [52:9] [71:10]
 [81:25] [82:2] [83:20]
 [85:3,12] [89:21] [90:3]
 [96:23] [97:16] [101:22]
 [102:8] [105:23] [118:16]
 [127:19] [129:14] [136:16]
 [141:9] [144:23] [151:25]
 [161:20,21] [164:10,12,16]
 [169:2] [173:3] [182:12]
 [186:18,20] [199:8] [203:10]
yourself [9:4] [86:15] [148:7]
 [152:6]
youve [5:3] [8:15] [28:6]
 [44:19] [49:24] [60:10]
 [69:5] [80:21] [81:6] [101:7]
 [148:11] [151:8] [157:23]

Z

zero [32:22]